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SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1900.

No. 208.

FREDERICK WILLIAMS,
Petitioner,

vs.

GEORGE C. GAYLORD, CHARLES E. MADDRILL and DWIGHT T. ROLFE,
Respondents.

Petition to Supreme Court under the Act of March 3, 1891, for writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Supreme Court of the United States:

YOUR PETITIONER, FREDERICK WILLIAMS, respectfully presents to this Court this his petition for a writ of *certiorari* addressed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding said Court and the Clerk thereof to certify to this Court the record and proceedings in the case in said Court, wherein your petitioner, the said Frederick Williams, is appellant, and the respondents, the said George C. Gaylord, Charles E. Maddrill and Dwight T. Rolfe, are appellees, together with its opinion therein for the review and determination of said case by this Court, as provided in Section 6 of the Act of Congress, approved March 3, 1891.

Your petitioner states the facts in this behalf as follows:

On the 23d day of November, 1897, your petitioner as complainant filed his bill in equity in the Circuit Court of the United

States for the Northern District of California against The Gold Hill Mining Company, a corporation of the State of West Virginia, and the respondents above-named, to foreclose a certain first mortgage, dated July 1st, 1890, made and executed by said mining company to G. Livingston Morse, Trustee, to secure an issue of $50,000 of its first mortgage bonds. Said Morse having died, your petitioner was under the provisions of said mortgage duly elected as his successor in such trusteeship.

The bill seeks a foreclosure of a certain mine and lot of mining ground located in Nevada County, California.

The mining company made default in pleading and a decree *pro confesso* was entered against it. The respondents, judgment creditors of the mining company, answered the bill, setting up, among other things, that the mortgage and the bonds secured thereby were not valid because they had not been properly authorized under the provisions of an Act of the Legislature of the State of California approved April 23, 1880, entitled "An Act for the further protection of stockholders in mining companies," providing that a ratification by two-thirds in amount of the stockholders of any such company, either by consent in writing, duly acknowledged, or by resolution passed at a stockholders' meeting duly called for the purpose should be prerequisite to the action of the directors in mortgaging the property of the corporation.

A final decree was entered in favor of the judgment creditors, dismissing the bill of complaint upon the 26th day of September, 1899, certain pleas of the respondents having been previously overruled.

Thereupon your petitioner was allowed and took his appeal from said final decree to the said United States Circuit Court of Appeals for the Ninth Circuit and the said Circuit Court of Appeals affirmed the decree of the Circuit Court by decree entered on the 14th day of May, 1900.

On petition for rehearing filed by the said Frederick Williams, your petitioner, the Circuit Court of Appeals adhered to its decision, and on October 17, 1900, denied said motion.

The printed transcript of record and of opinions in the said cause are herewith submitted to this Court.

Your petitioner states that the said decree of the Circuit Court of Appeals and the said decree of the Circuit Court are contrary to law and the decisions of this Court, among other grounds, because

they proceed upon the theory and decide that the decision of the State Court permitting judgment creditors to set up and avail themselves of the benefit of an Act exclusively designed and expressly stated to be for the benefit of stockholders in mining companies, is binding upon the Federal Courts as a construction of a State Statute by the highest Court of said State as against a foreign corporation, the trustee of its mortgage and the *bona fide* holders of its negotiable bonds; when in fact, as your petitioner represents, said question is extrinsic to any construction of said statute, relates to general commercial law, and has been long settled in a manner favorable to persons occupying the position of your petitioner and the bondholders represented by him by numerous and prior decisions, some of which were rendered or concurred in by members of this Court then sitting therein, in a State Court or at Circuit.

Your petitioner also shows that the said mortgage was signed by officers owning more than two-thirds of the stock of said mining company and consenting thereto, and said mortgage was acquiesced in and accepted as valid by the stockholders of said company.

In addition to the grounds of review shown herein and in the record and brief of the petitioner, the fact that the matters involved in this case relate not to mere questions of local law or importance, but to a question of general and commercial law affecting vast interests of foreign corporations in various States of the Union, and the safeguards surrounding owners of their negotiable bonds authorized by the laws of the State creating the corporation as against subsequent creditors, whether by judgment or otherwise, renders this case eminently one in which a writ of *certiorari* should be granted.

This case, moreover, involves the large amount of $50,000 of bonds, with interest thereon nearly equal in amount, owned by various persons, who gave full value therefor.

Wherefore, your petitioner prays that, upon the grounds and for the reasons appearing in the record of said cause and in the brief in support of this petition, this Court issue such writ of *certiorari*, commanding said United States Circuit Court of Appeals and the Clerk thereof to certify to this Court the record and proceedings in said case in said Court, with its opinion therein, for the review and determination of said case by this Court, as provided in Section 6 of the Act of Congress of March 3d, 1891; and your petitioner will ever pray.

C. WALTER ARTZ,
Attorney for Petitioner.

(17,988.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 208.

FREDERICK WILLIAMS, PETITIONER,

vs.

GEORGE C. GAYLORD, CHARLES E. MADDRILL, AND DWIGHT T. ROLFE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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a In the United States Circuit Court of Appeals for the Ninth Circuit.

FREDERICK WILLIAMS, Appellant,
vs.
GEORGE C. GAYLOR, CHARLES E. MADDRILL, and DWIGHT T. Rolfe, Appellees. } No. 581.

Transcript of Record.

Appeal from the circuit court of the United States for the northern district of California.

b In the United States Circuit Court of Appeals for the Ninth Circuit.

FREDERICK WILLIAMS, Appellant,
vs.
GEORGE C. GAYLORD, CHARLES E. MADDRILL, and DWIGHT T. Rolfe, Appellees.

Stipulation as to Evidence.

It appears from the minutes made by the judge of the circuit court in this action, that upon the trial in said court it was stipulated by counsel for the respective parties that all laws of West Virginia relating to corporations of the character of defendant corporation should be deemed and considered as having been offered and read in evidence; and also that the mortgage, "Exhibit A" to the bill of complaint, was recorded in the office of the county recorder of Nevada county, California, at the date alleged in the bill, and that the printed record heretofore filed fails to show such stipulations, it is hereby agreed that said record may be corrected accordingly.

February 2, 1900.

LINDLEY & EICKHOFF,
Solicitors for Appellees.

(Endorsed:) Stipulation as to evidence. Filed February 3, 1900. F. D. Monckton, clerk.

1 United States Circuit Court of Appeals for the Ninth Circuit.

FREDERICK WILLIAMS, Appellant,
vs.
GEORGE C. GAYLORD, CHARLES E. MADDRILL, and DWIGHT T. Rolfe, Appellees. } No. —

Order Extending Time to File Record and Docket Cause.

Good cause appearing therefor, it is ordered that the appellant have to and including the second day of January, 1900, within which to file his record on appeal and docket the cause herein, upon

appeal from the circuit court of the United States, ninth judicial circuit, northern district of California.

Dated December 22, 1899.

WM. W. MORROW,
United States Circuit Judge.

2 In the Circuit Court of the United States *of* the Northern District of California.

FREDERICK WILLIAMS, Trustee, Plaintiff,
vs.
THE GOLD HILL MINING COMPANY (a Corporation), GEORGE C. Gaylord, Chas. E. Maddrill, and Dwight T. Rolfe, Defendants.

Bill of Foreclosure.

To the honorable the judges of the circuit court of the United States *of* the northern district of California:

Frederick Williams, a citizen and resident of the State of New York, brings this his bill of complaint against the Gold Hill Mining Company, a corporation organized under and by virtue of the laws of the State of West Virginia, and carrying on its business, among other places, in the county of Nevada, State of California, and Geo. C. Gaylord, Chas. E. Maddrill, Dwight T. Rolfe, citizens of California.

And thereupon your orator respectfully shows to your honorable court and avers as follows:

I. That on and prior to the first day of July, 1890, said The Gold Hill Mining Company (hereinafter styled the mining com-
3 pany) was a corporation duly created and constituted under and by virtue of the laws of the State of West Virginia, and was fully authorized and empowered to own the property herein described, and to engage in the business for which it was formed, to execute and deliver the bonds and mortgage hereinafter mentioned.

II. That on or about the twenty-fifth day of June, 1890, the defendant mining company, for the purpose of securing the payment of money advanced by certain parties to secure the title to this property hereinafter named and described, and for securing sufficient funds for working capital, duly resolved and determined to issue its first-mortgage, ten per cent. five-year bonds, consisting of one hundred coupon bonds of ($500.00) five hundred dollars each, numbered consecutively from one to one hundred, inclusive, and to secure the payment of the interest and principal of all the said bonds equally and ratably, without priority or distinction, by mortgage or deed of trust to G. Livingston Morse, a citizen and resident of the State of New York, upon all the property and assets of said mining company situated in the county of Nevada and State of California, and hereinafter more particularly described. That, in pursuance of such resolution and determination, and in the exercise of its lawful and corporate powers, and due corporate action having first been had, said defendant mining company made and executed its

said bonds, by each of which, for value received, it promised to pay to the bearer or the registered holder thereof the sum of five hundred dollars ($500), in gold coin of the United States of America, at the office of said defendant, The Gold Hill Mining Company,
4 in New York city, on the first day of July, 1895, unless sooner redeemed, in accordance with the provisions of said bonds, with interest thereon from the first day of July, 1890, at the rate of ten per cent. per annum, payable semi-annually at the place aforesaid, in like gold coin, on the first days of January and July in each year, on presentation of the coupons thereto annexed as they severally should become due, until such principal sum should be fully paid.

III. That on or about said first day of July, 1890, said defendant mining company, in pursuance of its resolution and determination above mentioned, and in the due exercise of its corporate powers, and due corporate action having first been been had, in order to secure the payment of the interest and principal of said bonds as the same should become payable, according to the tenor of said bonds and the coupons thereto attached, made, executed and delivered unto said G. Livingston Morse its certain mortgage or deed of trust, bearing date July 1, 1890, and therein and thereby granted, bargained, sold, released, aliened and conveyed unto the said G. Livingston Morse, as trustee, his successors and assigns, all and singular, the following-described premises and property, viz:

All and singular, that certain quartz mining claim known as the Nevada City quartz mine, situated near Nevada City, in the county of Nevada and State of California, and particularly described as follows:

First. That certain portion of township sixteen (16) north, of range eight (8) east, Mt. Diablo meridian, and in the Nevada mining district, designated in the office of the United States sur-
5 veyor general for California as lot No. 85, containing four and fifty-three one-hundredths (4.53) acres of land, more or less, and embracing one thousand (1,000) linear feet of the Schmidt quartz lode, being the land and mine patented to John J. Schmidt, Jr., and said patent dated Sept. 28, 1880, and recorded in Book 1 of Patents, pages 666–'7–'8–'9–670–'71, records of Nevada county, California, to which patent and the record thereof reference is hereby made for a more full description.

Second. That certain other parcel of mining ground known as the Nevada City Extension gold quartz lode, situate in Nevada mining district in said county and State, embracing a portion of sections two (2) and eleven (11) in township sixteen (16) north, range eight (8) east, Mt. Diablo meridian, contains fourteen and seventy-three one-hundredths (14.73) acres of land, more or less, and embracing fourteen hundred and ninety-nine and five-tenths ($1,499\frac{5}{10}$) linear feet of the said Nevada City Extension quartz lode, said ground being the claim patented by the grant of the United States to the Nevada City Gold Quartz Mining Company on the fifteenth day of March, 1883, which patent was duly recorded in the office of the county recorder of Nevada county, California, Book 2 of Pat-

ents, pages 25-'6-'7-'8-'9 and 30, records of Nevada county, to which patent and record thereof reference is hereby made for a more particular description.

Third. That certain portion of the Leatje and Schwartz placer mine, commencing at the northeast corner of said placer mine and extending thence south on the east line of said mine to a
6 point fifty (50) feet north of the main flume in Wood's ravine; thence running due west to the west line of said placer Mine; thence north on the west side of said placer mine to the northwest corner thereof; thence east on the north line of said placer mine to the place of beginning—containing fifteen (15) acres, more or less. Said Leatje and Schwartz placer mine is covered by a patent from the United States, which patent is of record in the office of the recorder of Nevada county, in Book Forty-one (41) of deeds, pages 506-'7, to which patent and record reference is hereby made. Together with all quartz mills, hoisting works and machinery of every kind, and all iron pipe, cuts, tunnels, rights of way, privileges, easements and improvements, and to said mine belonging, or used in connection therewith, or with any part thereof; together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion, remainders, rents, issues and profits thereof, and all the estate, right, title and interest, property and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same and every part thereof, to have and to hold, all and singular, the above-described real estate, lands premises, mills and other structures, machinery, apparatus, appliances, with the appurtenances, tenements and other property, unto said G. Livingston Morse, his successors and assigns, upon such trusts and uses, and upon the terms, trusts, conditions and covenant in said mortgage or deed of trust mentioned.

IV. That said mortgage or deed of trust was authorized,
7 made, executed and delivered in all respects in conformity with law, and was duly recorded in the office of the county recorder of the county of Nevada, State of California, on the thirtieth day of July, 1890, and recorded at vol. 24, page 157. That said G. Livingston Morse duly accepted the trust created in and by said mortgage or deed of trust before the recording of same as aforesaid. Your orator refers to the said mortgage so recorded and to a true copy thereof annexed to [this bill of complaint as part thereof, marked "Exhibit A," for a particular statement of the terms and privileges of said mortgage or deed of trust, and also annexed a true copy of the form of bond issued thereunder, and marked "Exhibit B," and your orator prays] that said copies, Exhibits "A" and "B," may be taken in all respects as if fully set out in the body of this bill.

V. Your orator further shows that the whole of the issue of said bonds, being (100) one hundred bonds, of the par value of five hundred dollars ($500), which was made and executed as aforesaid, were duly authenticated by the endorsement thereon of the certificate of said G. Livingston Morse, as provided in said bonds and

mortgage, and, so authenticated, were duly delivered, and, as your orator is informed and verily believes, all of said one hundred (100) bonds have been duly issued, negotiated and sold to diverse persons, who have thereby become *bona fide* holders thereof, as purchasers of the same for value, and are all now outstanding and valid and binding obligations of the defendant mining company. Your orator is informed and believes that the holders of said bonds are numerous, and the names and residences of many of them unknown to your orator.

8 VI. That heretofore, to wit, on the first day of July, 1793, the defendant mining company made default in the payment of the half year's interest mentioned in said bonds and coupons, accruing and becoming due and payable on that day upon said bonds, which semi-annual installments of interest amounted in the aggregate to the sum of twenty-five hundred dollars ($2,500), and did not pay and has never paid or caused to be paid any of the interest warrants or coupons which then became due, and has not paid or satisfied or caused to be satisfied said semi-annual installment of interest and said coupons, or any part thereof, which became due on said first day of July, 1893, as aforesaid, in any manner, or that payment thereof was duly demanded, that thereby default was made by the defendant mining company in the performance of the terms and conditions of said mortgage or deed of trust.

That heretofore, to wit, on the first day of January, 1894, and on the first day of July, 1894, on the first day of January, 1895, and on the first day of July, 1895, similar defaults occurred and since continues. That upon said first day of July, 1895, under and in pursuance of the terms of said mortgage and bonds, the principal amount thereof became due and payable, the same not having been paid before under the option contained in said bonds, and thereupon due demand was made for the payment of such principal sum, the same being in all, as aforesaid, fifty thousand dollars ($50,000); that notwithstanding such demand, the said defendant mining company did not pay, and has never paid or caused

9 to be paid, any portion of said principal amount, and thereby further default was made in the performance of the terms and conditions of said mortgage or deed of trust.

VII. Your orator further shows that the security *was* as aforesaid furnished and given in and by said mortgage to the trusts thereof for the payment of said bonds and interest thereon, is, in the present condition and situation of said mortgaged premises, as your orator is informed and believes, inadequate to secure the payment of said bonds, with the said interest thereon, according to their tenure and effect, and will continue to diminish in value unless said mortgaged premises can be placed in the possession or under the control of said bondholders or their representatives or of a receiver to be appointed in this suit; that the said defendant mining company has been for some time, and still is, insolvent and unable to pay its just debts and liabilities in full. That the said mortgaged property is so circumstanced that it cannot be sold in parcels without injury to the

interests of the parties, and that a sale of the whole of said mortgaged property will be most beneficial to the said parties.

VIII. That your orator is informed and believes that the persons or parties other than said mining company named as defendants in this bill of complaint are citizens and residents as stated, and have or claim to have some interest in or lien upon the premises covered by the mortgage sought to be foreclosed in this suit, or upon some part of said premises, as purchasers, mortgagees, judgment creditors or otherwise, which interest or lien, if any, has accrued subsequently to the lien of said mortgage, and is subject and subordinate thereto.

10 IX. Your orator further shows that it was provided in said mortgage or deed of trust that, in case of the death, resignation or inability to serve at any time of the party of the second part as such trustee, then, and in such case, a trustee may be appointed by the majority of the holders of the said bonds then outstanding and unpaid, upon giving previous notice to all the holders of said bonds of one month, of the time and place of meeting of the board of directors of said Gold Hill Mining Company, and at said meeting a majority of the holders of said bonds might vote in person or by proxy, and the secretary of said company should at such meeting, on counting the votes given or cast, declare the person elected by a majority of all the votes cast, and thereupon the person so elected should be the trustee of and for the holders of such bonds, with the same powers and duties theretofore devolving upon the trustee mentioned in said mortgage; that the said G. Livingston Morse died on or about the twenty-fifth day of January, 1891, and that thereafter, and in pursuance of and in conformity with the said provision in said mortgage or deed of trust contained, a meeting of the bondholders, called upon due notice, was held, and by the votes of a majority in interest of the outstanding bonds, your orator was, on March fourth (4th), 1891, elected trustee of said mortgage and the bonds secured thereby, to succeed the said G. Livingston Morse, deceased; that your orator duly accepted his said trust, and qualified therein, and has ever since acted as trustee of said mortgage and bonds.

X. Your orator further avers that he is informed and be-

11 lieves that no proceedings have been had at law or in equity for the collection of the debts secured by said mortgage, or *in* part thereof, save only this suit.

That the said mortgage or deed of trust was given to secure the purchase price of the property, and a working capital to start the mine, and the money so advanced was so used and appropriated.

Wherefore, and forasmuch as your orator is without remedy in the premises, at and by the strict rules of the common law, and can only have adequate relief in a court of equity, where matters of this and of like nature are properly cognizable, your orator prays as follows:

(1.) That said mortgage, dated July 1, 1890, be foreclosed.

(2.) That the lien of the said mortgage may be decreed and established as a lien by the property and franchises covered thereby, and hereinbefore mentioned and described, and that the amount due

and to become due for principal and interest upon the said bonds outstanding and secured by said mortgage, may be ascertained and determined.

(3.) That in default of the payment of the sum found due within a time to be limited by the decree of this honorable court, it may be decreed that the defendant mining company and the persons claiming under it any interest in said mortgaged property as aforesaid, subsequent to the lien of said mortgage, be absolutely barred and foreclosed of and from all right or equity or redemption of, in or to said mortgaged premises and property, or in part thereof, and that a sale of the whole of the mortgaged property and premises be ordered in accordance with law and the practice of this hon-
12 orable court, and that the proceeds may be applied to the expenses of this suit and to the payment of the amounts found due as aforesaid, and the balance thereof as the court may decree.

(4.) That if the proceeds of said sale shall be insufficient to pay the amounts due upon said bonds for principal and interest, the defendant mining company be adjudged to be liable to pay and be required to pay the amount of said deficiency to your orator or to the owners and holders of said bonds and coupons.

(5.) That a receiver or receivers be appointed to take possession of the property, estate and franchises of the defendant mining company, and with all such power and authority as may be required to preserve the same until the sale thereof, as the same may be decreed and ordered by this honorable court, and with powers and authority as are actually possessed by receivers in like cases, as this court may direct.

(6.) That the defendant mining company, its officers, directors, and all other persons claiming or pretending to claim under them, and all other persons whomsoever, may be restrained by injunction of this honorable court from interfering with or disposing of said mortgaged premises, property and franchises, or any part or parts thereof, or any earnings or proceeds thereof.

(7.) That the court may issue a writ of subpœna to be directed to the defendants before named, The Gold Hill Mining Company, George C. Gaylord, Chas. E. Maddrill, Dwight T. Rolfe, commanding them at a certain time and under certain penalty therein to be limited, personally to be and appear before this court, and then and there full, true and perfect answers make to all and singular
13 the premises, and further to stand to, perform and abide such other or further order, direction and decree herein as to the court shall seem meet.

FREDERICK WILLIAMS, *Trustee.*
THOMAS S. FORD,
Attorney for Plaintiff.

C. WALTER ARTZ,
Of Counsel, 54 *Wall Street, New York City.*

UNITED STATES OF AMERICA,
Northern District of New York, County of Jefferson, } ss:

Frederick Williams, being duly sworn, says that he is the complainant therein, that the foregoing bill of complaint is true of his own knowledge, except the matters therein stated to be alleged upon information and belief, and as to those matters, he believes them to be true.

FREDERICK WILLIAMS, *Trustee.*

Sworn to before me this third day of November, 1897.

N. C. HOUGHTON,
Notary Public.

STATE OF NEW YORK,
County of Jefferson, } ss:

I, F. D. Pierce, clerk of the county of Jefferson and clerk of the supreme and county courts, which are courts of record in and for said county, do hereby certify: That N. G. Houghton, Esq., whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof or acknowledgment, a notary public in and for said county, residing in the said county, duly authorized to take the same; that I am well acquainted with the handwriting of said notary public, and verily believe that the signature to said certificate of proof or acknowledgment is genuine, and that said instrument is executed and acknowledged according to the laws of the State.

14

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said county and courts thereof, at Watertown, N. Y., this fourth day of November, 1897.

F. D. PIERCE, *Clerk,*
By J. B. MURRY,
Deputy Clerk.

EXHIBIT "A."

Mortgage.

This indenture, made this first day of July, A. D. 1890, between the Gold Hill Mining Company, a corporation duly organized and incorporated under the laws of the State of West Virginia, party of the first part, and G. Livingston Morse, of the city of New York, as trustee, for the use and purposes hereinafter named, party of the second part, witnesseth: That whereas, the party of the first part, for the purpose of securing payment of money advanced by certain parties to secure the title to its property, hereinafter named and described, and for securing sufficient funds for working capital, and to that end did, on the twenty-fifth day of June, 1890, duly pass and adopt a resolution, directing that the said company shall issue bonds, to be secured by first mortgage on all its mines and property, hereinafter described, to the amount of fifty thousand dollars ($50,000), having five years to run, and to bear

15

interest at the rate of ten per cent. per annum, payable semi-annually, with the privilege of paying same sooner, upon the condition hereinafter expressed. And, whereas, the said company, under and in pursuance of said resolution, have issued, or is about to issue, one hundred coupon bonds of the said company of five hundred dollars ($500) each, each bearing even date herewith, and payable in five years from date, with interest payable semi-annually at the rate of ten per cent. per annum, in the form and manner following, that is to say, said bonds to be one hundred in all, and of the amount of five hundred dollars each, bearing even date herewith, running five years, with interest at 10 per cent., payable semi-annually at the office of the company, in the city of New York, with coupons attached thereto, or interest warrants indicating the interest to be paid semi-annually, with privilege reserved to the Gold Hill Mining Company to pay off the said bonds sooner or any day interest is payable, on giving six months' previous notice to the holders of said bonds of its intention that to do, or on paying six months' interest in advance at the time of paying off said bonds, and thus discharge and release the property from the lien of this mortgage, and have the same cancelled of record.

16 Now, therefore, this indenture witnesseth: That the said party of the first part, for and in consideration of the premises, and the sum of one dollar to it in hand paid, the receipt whereof is hereby confessed and acknowledged, and for the better securing the payment of said bonds and interest, hath granted, bargained, sold, released, aliened and conveyed, and by these presents doth grant, bargain, sell, release, alien and convey unto the said party of the second part, as such trustee, his successors and assigns, all and singular, the following premises and property, viz:

All and singular, that certain quartz mining claim known as the Nevada City quartz mine, situate near Nevada City, in the county of Nevada and State of California, and particularly described as follows:

First. That certain portion of township sixteen (16) north, of range eight (8) east, Mt. Diablo meridian, and in the Nevada mining district, designated in the office of the United States surveyor general for California as lot No. 85, containing four and fifty-three one-hundredths (4.53) acres of land, more or less, and embracing one thousand (1,000) linear feet of the Schmidt quartz lode, being the land and mine patented to John J. Schmidt, Jr., and said patent, dated Sept. 28, 1880, and recorded in Book 1 of Patents, pages 666-'7-'8-'9-670-'71, records of Nevada county, California, to which patent and the record thereof reference is hereby made for a more full description.

Second. That certain other parcel of mining ground known as the Nevada City Extension gold quartz lode, situate in Nevada
17 mining district in said county and State, embracing a portion of sections two (2) and eleven (11), in township sixteen (16) north, range eight (8) east, Mt. Diablo meridian, contains fourteen and seventy-three one-hundredths (14.73) acres of land, more or less, and embracing fourteen hundred and ninety-nine and five-

tenths ($1,499\frac{5}{10}$) linear feet of the said Nevada City Extension quartz lode, said ground being the claim patented by the grant of the United States to the Nevada City Gold Quartz Mining Company on the 15th day of March, 1883, which patent was duly recorded in the office of the county recorder of Nevada county, California, Book 2 of Patents, pages 25–'6–'7–'8–'9 and 30, records of Nevada county, to which patent and record thereof reference is hereby made for a more particular description.

Third. That certain portion of the Leatje and Schwartz placer mine, commencing at the northeast corner of said placer mine, and extending thence south on the east line of said mine to a point fifty (50) feet north of the main flume in Wood's ravine; thence running due west to the west line of said placer mine; thence north on the west line of said placer mine to the northwest corner thereof; thence east on the north line of said placer mine to the place of beginning—containing fifteen (15) acres, more or less. Said Leatje and Schwartz placer mine is covered by a patent from the United States, which patent is of record in the office of the recorder of Nevada county, in Book Forty-one (41) of Deeds, pages 506–'7, to which patent and record reference is hereby made—together with all quartz mills, hoisting works and machinery of every kind, and all iron
18 pipe, cuts, tunnels, rights of way, privileges, easements, and improvements, and to said mine belonging or used in connection therewith, or with any part thereof; together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion, remainders, rents, issues and profits thereof, and all the estate, right, title and interest, property and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same and every part thereof, to have and to hold the same unto the said party of the second part, his successors and assigns forever.

Provided, however, and these presents are upon the express condition, that if the said party of the first part, its successor or successors or assigns, shall well and truly pay or cause to be paid unto the holders of the said bonds so issued or about to be issued as aforesaid the principal and interest to grow due thereon to the said holders respectively at the times and in the manner mentioned in the said bonds and in the coupons or interest warrants thereunto annexed, according to the true intent and meaning thereof, then these presents and the estate hereby created shall cease, determine and become null and void. And it is hereby covenanted and agreed by the party of the first part that it will pay and discharge all taxes or other charges which may at any time become a lien on the premises and property hereinbefore described, the payment whereof shall be material and necessary to protect and secure the payment of said bonds or interest thereon.

19 And it is further covenanted and agreed by the party of the first part that it will keep the buildings and machinery at and on the mines of the company insured in some good and solvent insurance company in a reasonable amount, loss, if any, payable

to the holders of said bonds or to the said trustee, for the use and benefit of the holders of said bonds.

And it is further covenanted and agreed by the party of the first part that it will keep in said mines of the company at all times sufficient amount of ore available to pay off said bonds and interest, net, over and above all the expenses of mining and milling.

And it is further covenanted and agreed by the party of the first part that if any default shall be made in the payment of any of the said bonds, or coupons, or interest warrants mentioned aforesaid, or any part thereof, or shall neglect or refuse to keep the buildings and machinery on the mines insured in some good, solvent insurance company, in a reasonable sum or amount, the loss, if any, payable to the holders of said bonds or to the said trustee for their benefit, or if said company shall fail to keep in reserve and available in the said mine of the company sufficient amount of ore at all times to pay off said bonds and interest net over and above all mining and milling expenses, then, on default thereof, or of any of the aforesaid covenants or agreements, or any part thereof, then, if the same shall remain unperformed, or any one of them shall remain unperformed the space of ninety days, then from thenceforth, on request of a majority in interest of said holders of said bonds then out-
20 standing, it shall be lawful for the said party of the second part as such trustee, his successors and assigns, for and in behalf of the holders of said bonds, to enter upon and take possession of all and singular the said property premises hereinbefore described, and to sell and dispose of the same and all benefits of the equity of redemption of the said party of the first part, its successors or assigns, therein at public auction, according to law, giving due notice of the time and place of sale, and said party of the second part, as attorney of the said party of the first part, by these presents duly constituted, authorized and appointed, to make, execute, and acknowledge and deliver to the purchaser or purchasers thereof, his or their heirs or assigns, a deed or deeds of conveyance, bill of sale, or other instruments in law sufficient to vest in him or them the said mortgaged premises, or any part thereof, and, out of the moneys received or arising from such sale or sales, to keep and retain the principal and interest which shall then be due on said several bonds to the respective holders and owners thereof, and to pay over the same to the said holders of said bonds each his share or *pro rata* share thereof after paying out of said funds the costs, expenses and charges of such sale of said mines and property, rendering the overplus, if any there shall be, to the said party of the first part, its successor, or successors, or assigns.

And it is further mutually covenanted and agreed that in case of the death, resignation or inability to serve at any time of the party of the second part as such trustee, then, and in such case, a trustee may be appointed by a majority of the holders of said bonds then outstanding and unpaid, upon giving previous notice to all
21 the holders of said bonds, of one month, of the time and place of meeting of the board of directors of said Gold Hill Mining

Company, and at such meeting a majority of the holders of such bonds may vote in person or by proxy, and the secretary of said company shall, at such meeting, on counting the votes given or cast, declare the person elected by a majority of all the votes cast, and thereupon the person selected shall be the trustee of and for the holders of such bonds, with the same powers and duties as are now herein devolved upon the said party of the second part. At such meeting each bond shall have one vote.

In witness whereof, the said party of the first part has hereunto caused its corporate seal to be affixed and these presents to be subscribed by its president and secretary on the day and year first above written.

[L. S.] M. J. SHOECRAFT, *President.*
C. LITTLEFIELD, *Secretary.*

STATE OF NEW YORK, }
City and County of New York, } ss:

On this twenty-fourth day of July, A. D. 1890, before the undersigned, a notary public in and for the county and State aforesaid, came M. J. Shoecraft and Calvin Littlefield, to me known, who, being by me duly sworn, each for himself, did depose and say: That the said M. J. Shoecraft was the president, and the said Calvin Littlefield was the secretary of the said Gold Hill Mining Company, the corporation described in, and which executed the foregoing
22 mortgage; that the seal affixed to the foregoing instrument is the corporate seal of said company, and was thereto affixed by order of the board of directors of said company, and that they respectively signed their names thereto by the like authority.

[SEAL.] M. H. DILLENBECK,
Notary Public, City and County of New York.

STATE OF NEW YORK, }
City and County of New York, } ss:

I, Edward F. Reilly, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that M. H. Dillenbeck, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same. And, further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county, the twenty-fourth day of July, 1890.

[SEAL.] EDWARD F. REILLY, *Clerk.*

23 Recorded at request of B. N. Shoecraft, July 30, 1890, at 45 min. past 4 o clock p. m.

A. B. BRADY, *Recorder.*

Recorded in Book 24 of Mortgages, pages 157-'8-'9-'60-'1-'2-'3-'4-'5-'6-'7, records of Nevada county, California.

EXHIBIT "B."

Bond.

UNITED STATES OF AMERICA:

The Gold Hill Mining Company.

$500. *First-mortgage Ten Per Cent. Gold Bond.* Number —.

For value received, the Gold Hill Mining Company promises to pay to bearer, or the registered holder hereof, the sum of five hundred dollars in gold coin of the United States of America, at the office of the Gold Hill Mining Company in New York city, New York, on the first day of July, 1895, with interest at the rate of ten per centum per annum from July 1, 1890, payable semi-annually at the place aforesaid in like gold coin on the first days of January and July in each year on presentation of the annexed coupons therefor.

This bond is one of a series numbered consecutively from one to one hundred and amounting in the aggregate to fifty thousand dollars, all of like date, the payment whereof is secured by a first mortgage or deed of trust, bearing date the first day of July, A. D. 1890, duly executed and delivered by the Gold Hill Mining Company, and duly recorded, conveying the real and personal prop-
24 erty of said company and all else therein described, in trust, to secure the payment of said bonds and interest.

If default shall be made in the payment of any half yearly installment of interest on any such bond, the principal thereof may become due and payable as provided in said mortgage or deed of trust.

This bond shall pass by delivery unless registered on the books of the company, but, after registration of ownership, duly certified thereon, no transfer except upon the books of the company, shall be valid unless the last transfer shall have been to bearer, and this bond shall continue subject to successive registrations and transfers to bearer at the option of the holder.

The company reserves the right in the mortgage or deed of trust to redeem this bond on any day when interest is payable, either by giving six months' notice by publication in the "New York Times" once a week for five successive weeks, or by paying interest six months in advance.

This bond shall not become obligatory until the certificate endorsed hereon is signed by the trustee, G. Livingston Morse.

In witness whereof, the Gold Hill Mining Company, by resolution

of its board of directors, has caused its corporate seal to be hereto affixed and signed by its president, attested by its secretary, and has also caused the coupons hereto annexed to be duly numbered
25 and authenticated by signature of its treasurer, this first day of July, A. D. 1890.

THE GOLD HILL MINING COMPANY,
[SEAL.] By N. J. SHOECRAFT, *President.*

Attest: C. LITTLEFIELD, *Secretary.*

STATE OF CALIFORNIA:

$25. Coupon No. —.

The Gold Hill Mining Company will pay to bearer twenty-five dollars in gold coin of the United States of America, at the office of the company in New York city, New York, on the —, being six months' interest then due on its first mortgage.

Bond No. —. C. LITTLEFIELD, *Treasurer.*

Number —.

First-mortgage ten per cent. gold bond of the Gold Hill Mining Company, $500, interest payable January 1 and July 1, principal due July 1, 1895. Principal and interest payable at the office of the Gold Hill Mining Company, New York city, New York.

Trustee's Certificate.

This bond is one of the series of bonds within mentioned, and also described in a mortgage or deed of trust, bearing date of
26 the first day of July, A. D. 1890, and executed by the Gold Hill Mining Company to G. Livingston Morse, trustee.

G. LIVINGSTON MORSE, *Trustee.*

(Endorsed:) Filed November 23, 1897. Southard Hoffman, clerk.

Subpœna ad Respondendum.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California. In Equity.

The President of the United States of America, Greeting:

To the Gold Hill Mining Company, a corporation organized under and by virtue of the laws of the State of West Virginia and carrying on its business, among other places, in the county of Nevada, State of California; George C. Gaylord, Chas. E. Maddrill, and Dwight T. Rolfe:

You are hereby commanded that you be and appear in said circuit court of the United States aforesaid, at the court-room in San Francisco, on the third day of January, A. D. 1898, to answer a bill of complaint exhibited against you in said court by Frederick Wil-

liams, who is a citizen of the State of New York, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

27 Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this twenty-third day of November, in the year of our Lord one thousand eight hundred and ninety-seven, and of our Independence the one hundred and twenty-second.

[Seal of the Court.]

SOUTHARD HOFFMAN, *Clerk.*

Memorandum Pursuant to Rule 12, *Rules of Practice for the Courts of Equity of the United States.*

You are hereby required to enter your appearance in the above suit, on or before the first Monday of January next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso.*

SOUTHARD HOFFMAN, *Clerk.*

(Endorsed.)

UNITED STATES MARSHAL'S OFFICE, }
Northern District of California. }

I hereby certify that I received the within writ on the twenty-third day of November, 1897, and personally served the same on the second day of December, 1897, on The Gold Hill Mining Company, a corporation, George C. Gaylord and Chas. E. Maddrill, by delivering to and leaving with B. N. Shoecraft, general manager of the Gold Hill Mining Company, a corporation, George C. Gay-

28 lord and Chas. E. Maddrill, said defendants named therein, at Nevada City, county of Nevada, in said district, an attested copy thereof.

San Francisco, December 6, 1897.

BARRY BALDWIN,
United States Marshal.

UNITED STATES MARSHAL'S OFFICE, }
Northern District of California. }

I hereby certify that I received the within writ on the twenty-third day of November, 1897, and personally served the same on the third day of December, 1897, on Dwight T. Rolfe by delivering to and leaving with Dwight T. Rolfe, said defendant named therein, at Nevada City, county of Nevada, in said district, an attested copy thereof.

San Francisco, December 6, 1897.

BARRY BALDWIN,
United States Marshal.

Filed December 6, 1897.

SOUTHARD HOFFMAN, *Clerk.*

Notice to Take Amendment to Complaint.

NEVADA CITY, CAL., *November* 24, 1897.

Hon. S. Hoffman, clerk of United States circuit court, Appraiser's building, San Francisco, California.

DEAR SIR: I enclose an amendment to my complaint.
29 If not too late, or contrary to your rules, will you please file the same, and insert name of additional defendant in process for marshal?

Yours truly, THOS. S. FORD.

In the United States Circuit Court of the Northern District of California.

F. WILLIAMS, Trustee, Plaintiff,
vs.
THE GOLD HILL MINING COMPANY (a Corporation) ET AL., Defendants.

Amendment to Complaint.

The plaintiff's complaint is amended by inserting and adding as a defendant herein the firm of copartners, known as Martin Bros. & Muir, citizens of California, said defendant firm being one of the defendants referred to and alleged to claim some interest in the property described in the complaint, which is subject to and subsequent in point of right and time to plaintiff's mortgage, and that it may be so adjudged by the decree. (Said defendant was omitted by inadvertence in original complaint.)

THOS. S. FORD,
Attorney for Plaintiff.

C. WALTER ARTZ, *Of Counsel.*

(Endorsed:) Filed November 26, 1897. Southard Hoffman, clerk.

30 *Subpœna ad Respondendum to New Defendants.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California. In Equity.

The President of the United States of America to Martin Bros. & Muir, Greeting:

You are hereby commanded that you be and appear in said circuit court of the United States aforesaid, at the court-room in San Francisco, on the third day of January, A. D. 1898, to answer a bill of complaint and amendment to complaint exhibited against you in said court by Frederick Williams, who is a citizen of the State of New York, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under a penalty of five thousand dollars.

Witness the Honorable Melville Fuller, Chief Justice of the United States, this twenty-sixth day of November, in the year of our Lord one thousand eight hundred and ninety-seven and of our Independence the one hundred and twenty-second.

[SEAL OF COURT.] SOUTHARD HOFFMAN, *Clerk.*

31 *Memorandum Pursuant to Rule* 12, *Rules of Practice for the Courts of Equity of the United States.*

You are hereby required to enter your appearance in the above suit, on or before the first Monday of January next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso.*

SOUTHARD HOFFMAN, *Clerk.*

(Endorsed.)

UNITED STATES MARSHAL'S OFFICE, *Northern District of California.*

I hereby certify that I received the within writ on the twenty-sixth day of November, 1897, and personally served the same on the second day of December, 1897, on Martin Bros. & Muir, by delivering to and leaving with W. H. Martin, a member of the firm — Martin Bros. & Muir, said defendants named therein, at Nevada City, county of Nevada, in said district, an attested copy thereof.

San Francisco, December 6, 1897.

BARRY BALDWIN,
United States Marshal.

Filed December 6, 1897.

SOUTHARD HOFFMAN, *Clerk.*

32 In the United States Circuit Court, Ninth Circuit, Northern District of California.

FREDERICK WILLIAMS, Trustee, Plaintiff,
vs.
GOLD HILL MINING CO. (Corporation) ET AL., Defendants. } No. 12531.

Order for Rule Taking Bill pro Confesso against the Gold Hill Mining Company and Martin Brothers & Muir.

In the suit entitled Frederick Williams *vs.* Gold Hill Mining Company *et al.*, No. 12531, it appearing from the return of the United States marshal that a *subpœna ad respondendum* was served upon said defendant, Gold Hill Mining Company, on the second day of December, 1897, and on the same day upon defendant- Martin Brothers & Muir, and that said United States marshal made a return of said service on the sixth day of December, 1897, and that said return of service is on file in said court, you will please enter for me a decree

pro confesso against said defendants for their failure to enter an appearance in said cause on or before the third day of January, 1898.

Respectfully,

THOS. S. FORD,
Solicitor for Complainant.

C. WALTER ARTZ, *Of Counsel.*

(Endorsed:) Filed January 18, 1898. Southard Hoffman, clerk.

33 In the Circuit Court of the United States of the Ninth Judicial Circuit in and for the Northern District of California.

FREDERICK WILLIAMS
vs.
GOLD HILL MINING CO. ET AL.

Default of Defendants Gold Hill M'g Co. and Martin Bros. & Muir.

It appearing in the above-entitled cause that a *subpœna ad respondendum* was duly issued on the twenty-third day of November, 1897, and was regularly served upon the defendant, Gold Hill Mining Co., on the second day of December, 1897, by service upon B. N. Shoecraft, general manager of said company at Nevada City, Nevada county, California, and that a *subpœna ad respondendum* was regularly issued on the twenty-sixth day of November, 1897, and was regularly served upon the defendant, Martin Bros. & Muir, on the second day of December, 1897, by service on W. H. Martin, a member of said defendant firm, at Nevada City, Nevada county, California, being more than twenty days before the return of said subpœnas, and neither of said defendants having entered an appearance herein,

Now, therefore, on motion of Thos. S. Ford, solicitor for plaintiff, it is ordered that the bill of complaint be taken *pro confesso* as against said above-named defendants.

Entered at the request of Thos. S. Ford, solicitor for complainant, January 18, 1898.

SOUTHARD HOFFMAN, *Clerk.*

34 In the Circuit Court of the United States in the Northern District of California. In Equity.

FREDERICK WILLIAMS, Trustee, Plaintiff,
vs.
THE GOLD HILL MINING COMPANY (a Corporation), GEORGE C. Gaylord, Chas. E. Maddrill, and Dwight T. Rolfe, Defendants.

Plea of Defendants Gaylord, Maddrill, and Rolfe.

The joint and several plea of the above-named defendants, George C. Gaylord, Chas. E. Maddrill, and Dwight T. Rolfe, to the bill of complaint of the above-named plaintiff.

The defendants, George C. Gaylord, Chas. E. Maddrill, and Dwight T. Rolfe, and each of said defendants, by protestation, not confessing

or acknowledging all or any part of the matters or things in said bill of complaint mentioned to be true in such manner and form as the same are therein set forth and alleged, do plead thereto, and for plea to the whole of said bill do say:

That The Gold Hill Mining Company, corporation defend-
35 ant, is a mining corporation organized for the purpose of owning, operating, and working the mining claims described in the bill of complaint, which said mining claims are situate in Nevada county, California.

That the mortgage or trust deed set out in said bill of complaint, and alleged to have been executed by said corporation, was not ratified by the holders of at least two-thirds of the capital stock of said corporation, either in writing, signed and acknowledged by such stockholders, or by resolution duly passed at a stockholders' meeting called for that purpose, as required by the provisions of an act of the legislature of the State of California, approved April 23, 1880, entitled, "An act for the further protection of stockholders in mining companies," all *all* of which matters and things defendants, and each of them, aver to be true, and plead the same to the said bill, and humbly crave the judgment of this honorable court, whether defendants, or either of them, ought to be compelled to make any further, or other, answer to the said bill, and pray to be hence dismissed with their costs and charges in that behalf most wrongfully sustained.

J. M. WALLING,

Solicitor and of Counsel for Defendants George C. Gaylord, Chas. E. Maddrill, and Dwight T. Rolfe, Nevada City, California.

I hereby certify that the foregoing plea is in my opinion well founded in point of law.

J. M. WALLING,

Solicitor and of Counsel for George C. Gaylord, Chas. E. Maddrill, and Dwight T. Rolfe.

36 STATE OF CALIFORNIA, } ss:
County of Nevada, Northern District of California, }

George C. Gaylord, being duly sworn, deposes and says: I am one of the above-named defendants. The foregoing plea is true in point of fact, and is not interposed for delay.

GEORGE C. GAYLORD.

Subscribed and sworn to before me this twenty-ninth day of January, 1898.

F. T. NILON,

Judge of the Superior Court in and for the County of Nevada, State of California.

(Endorsed:) Service of the within plea, by copy, accepted this second day of February, 1898. Thos. S. Ford, attorney for plaintiff. Filed February 4, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

37 In the Circuit Court of the United States, Northern District of California.

FREDERICK WILLIAMS, Trustee, Plaintiff,
vs.
THE GOLD HILL MINING COMPANY (a Corporation), GEORGE C. Gaylord, Chas. E. Maddrill, and Dwight T. Rolfe, Defendants.

Answer of Chas. Maddrill and Dwight T. Rolfe

The answer of Charles E. Maddrill and Dwight T. Rolfe, two of the above-named defendants, to the bill of complaint of the above-named plaintiff.

Defendants admit that the Gold Hill Mining Company, in said bill of complaint styled "the mining company," was on and prior to the first day of July, 1890, a corporation duly created and constituted under and by virtue of the laws of the State of West Virginia, and was fully authorized and empowered to own the property described in said bill of complaint, and to engage in the business for which it was formed, and to execute and deliver the bonds in said bill of complaint mentioned; and also was empowered to execute and deliver the mortgage or trust deed mentioned in said bill of complaint, provided the execution and
38 delivery of said mortgage or trust deed was ratified by the holders of at least two-thirds of the capital stock of said corporation; such ratification having been made either in writing, signed and acknowledged by such stockholders, or by resolution duly passed at a stockholders' meeting called for that purpose, and not otherwise.

Defendants aver upon information and belief that no such ratification was had; that, without such ratification in manner and form aforesaid, said mortgage or trust deed created no lien whatever upon the premises and property described in said bill of complaint, or any part thereof.

Defendants further aver that the title to said mining claims and premises described in said bill of complaint were acquired by said corporation on the twenty-fourth day of June, 1890, and that M. J. Shoecraft, whose name appears signed to the mortgage or trust deed, annexed as Exhibit "A" to the said bill of complaint, was not the president of said corporation at the date thereof, to wit, July 1, 1890, nor was C. Littlefield, whose name appears signed to said Exhibit "A" as secretary of said corporation, the secretary thereof on said July 1, 1890, and defendants, upon information and belief, deny that said mortgage or trust deed was duly, or otherwise, executed by the president and secretary, or by the president or secretary of said corporation, or that the same was executed by said corporation, or that, by virtue of said mortgage or trust deed, the premises described in said bill of complaint were granted, bargained, sold, released,

aliened or conveyed to G. Livingston Morse, trustee, or the
39 plaintiff, or that by virtue thereof any lien whatever was created upon said mining claims and premises in favor of either said G. Livingston Morse or plaintiff as trustee, or otherwise.

As to allegations contained in subdivision "four" of said bill of complaint—"That said mortgage or deed of trust was authorized, made, executed and delivered in all respects in conformity with law"—defendants deny upon information and belief that said mortgage, or deed of trust, was authorized, made, or executed, or delivered, in all respects in conformity with law.

Denies that the same was executed by any person whatever authorized so to do, or that the same was ratified by holders of two-thirds of the capital stock of said corporation.

Further answering, defendants aver: That as to the allegations contained in the fifth subdivision of said bill of complaint, defendants have no positive knowledge or information as to the number or aggregate amount of the bonds therein described, have been legally, or otherwise, issued, negotiated or sold, or to whom, or if any person, or persons, are *bona fide* holders thereof as purchasers for value, or if any, or how many thereof, are outstanding, or how many, if any, are valid, binding obligations, against said mining company. Therefore, defendants deny, upon information and belief, that all of said one hundred bonds have been fully issued, negotiated or sold, but, upon the contrary, defendants, upon like information and belief, deny that all said bonds have been sold or otherwise disposed of to *bona fide* holders thereof, for value, or that any number of
40 said bonds over fifty in number were fully issued, negotiated or sold to any person or persons, or that any greater number thereof are now outstanding, valid or binding obligations against said mining company.

Defendants further deny, upon information and belief, that the defendant mining company is indebted in the sum of twenty-five hundred dollars semi-annually, on account of interest on account of said bonds for each, or any, half year since July 1, 1893, or prior thereto; but defendants aver that, if there are any bonds outstanding upon which interest is due and unpaid, the amount of such interest does not exceed twelve hundred and fifty dollars semi-annually.

Defendants deny, upon information and belief, that upon July 1, 1895, the sum of fifty thousand dollars principal, or said principal sum and interest thereon, became due and payable, but, on the contrary, defendants aver that, if any portion of said principal sum and interest thereon became due and payable on said date, the amount thereof did not exceed the sum of twenty-five thousand dollars, and interest thereon from July 1, 1893.

Further answering, defendants admit that they, and *and* each of them, are citizens and residents as stated in the bill of complaint, and that they each have a claim or lien upon the property and premises described in said bill; deny, upon information and belief, that such claims of defendants have accrued since the attaching of the lien of said mortgage or trust deed, or that the claim of defendants, or either

of them, is subject or subordinate thereto, and in support of the claims of defendants, defendants aver: That on June 15, 1896,
41 upon proceeding duly had and taken, said defendant, Charles Maddrill, recovered a judgment in the supreme court of the county of Nevada, State of California, against said Gold Hill Mining Company for the sum of six hundred and three dollars and fifty-five cents, including costs; a copy of said judgment being annexed hereto and marked Exhibit "A;" said judgment is made a part of this answer. That said judgment has not been appealed from, modified, reversed, vacated, or set aside, but still remains in full force and effect. That subsequent to the entry of said judgment, defendant Maddrill caused an order of sale in due form of law to issue thereon, and placed the same in the hands of the sheriff of the county of Nevada, and thereafter such proceedings were had and taken by said sheriff, as provided by the statutes in such case made and provided, that said mining claims and premises as described in said bill of complaint were duly sold by said sheriff to satisfy the amount due said defendant Maddrill thereon; that such sale was made on the twenty-sixth day of October, 1897, and at such sale these defendants became the purchasers of the whole of said mining claims and premises, they being the highest bidders at such sale, at the sum of six hundred and seventy-five dollars and twenty-five cents, and thereupon said sheriff duly issued and delivered to said purchasers a certificate of sale in due form of law, and defendants are now the owners and holders of said certificate, no redemption thereof having been made.

Further answering, defendants deny, upon information and belief, that said mortgage, or trust deed, was given to secure the pur-
42 chase price of the property, but, on the contrary, defendants aver that the property had been purchased and paid for before the execution or delivery of either said mortgage or trust deed, or said bonds, or either of them; deny that any considerable portion of money was used and appropriated, or used or appropriated as a working capital to start said mine, the exact amount so appropriated, if any, being unknown to these defendants.

Wherefore, having fully answered, defendants ask that it be decreed that said plaintiff has no lein upon said mines and premises described in the complaint herein; that the claims of these defendants are prior and paramount to the claims of plaintiff; that the amount due, and to become due, upon said mortgage and trust deed, if anything, be determined, and that defendants have such other, further, or different relief herein as may seem meet and agreeable to equity.

J. M. WALLING,
Solicitor and Counsel for Chas. Maddrill and Dwight T. Rolfe, Nevada City, California.

STATE OF CALIFORNIA,
County of Nevada, Northern District of California, } ss:

Dwight T. Rolfe, being duly sworn, says: I am one of the defendants named in the foregoing answer; I have heard the foregoing

answer read; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

DWIGHT T. ROLFE.

43 Subscribed and sworn to before me this twenty-ninth day of January, 1898.

F. T. NILON,
Judge of the Superior Court in and for the County of Nevada, State of California.

EXHIBIT "A."

In the Superior Court, County of Nevada, State of California.

CHARLES MADDRILL, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant.

Judgment of June 15, 1896.

This cause came on regularly to be heard in open court on this fifteenth day of June, A. D. 1896, J. M. Walling, Esq., appearing for plaintiff, the defendant not appearing:

The court having heard all the evidence in the case, and the proofs adduced, and it duly appearing that the default of the defendant for not answering herein had been duly noted, and after duly considering the same, and being fully advised in the premises, and it appearing therefrom to the court:

First. That the "Gold Hill Mining Company" (a corporation) has duly appeared herein by attorney, and has failed to file an answer herein within the time allowed by the court;

44 Second. That on January 29, 1896, said defendant was indebted to the plaintiff on account of work and labor performed by said plaintiff for defendant at the special instance and request of said defendant, as a miner, upon those certain mining claims and premises, as alleged in the complaint herein. That on, to wit, February 25, 1896, said plaintiff duly filed and recorded with the county recorder of said county, being the county wherein the property was situated, his claim, duly verified by his oath, containing a statement of plaintiff's demands, after deducting all just claims and offsets, with the name of the owner, and also the name of the person who employed plaintiff to perform said work and labor, with a statement of the terms, time given, and conditions of the contract, and also a description of the property sought to be charged with said lien, sufficient for identification. That all the allegations of the complaint are true. That there is still due and owing from said defendant to said plaintiff, on account of said lien, the sum of *5252*, and the further sum of five dollars and ninety cents, costs of preparing and filing said lien.

Three. That on January 31, 1896, said defendant was indebted

to D. T. Rolfe, on account of work and labor performed by said Rolfe, for defendant, at the special instance and request of said defendant as a miner upon those certain mining claims and premises described in the complaint herein, and as alleged in said complaint. That on, to wit, February 29, 1896, said Rolfe duly filed and recorded with the county recorder of said county, being the county wherein the property was situated, his claim, duly verified by his oath, containing a statement
45 of his demand, after deducting all just claims and offsets, with the name of the owner, and also the name of the person who employed said Rolfe to perform said work and labor, with a statement of the terms, time given, and conditions of said contract, and also a description of the property sought to be charged by said lien, sufficient for identification. That prior to the filing of the complaint herein, said Rolfe, for a valuable consideration, duly assigned said claim of lien to plaintiff. That said Rolfe expended on the preparation and filing said lien the sum of five dollars and ninety cents.

That there is due to plaintiff on account of said lien the sum of one hundred and eighty-three dollars, and five dollars and ninety cents for preparing and filing the same. That all the allegations of said complaint, relative so said last-mentioned lien, are true, except that there has been paid on account thereof the further sum of eight dollars, leaving the balance due one hundred and eighty-three dollars, instead of one hundred and ninety-one dollars, as alleged therein.

Fourth. That the sum of one hundred and fifty dollars is a reasonable sum to be allowed plaintiff as attorney fee on foreclosure.

Now, therefore, on motion of J. M. Walling, Esq., attorney for said plaintiff, it is adjudged and decreed that said liens be foreclosed; that all and singular the premises mentioned and described in said complaint and said liens, and hereinafter described, or so much thereof as may be necessary to raise the amount due plaintiff for principal and interest, attorney fees, and costs of this suit and
46 the expenses of sale, be sold at public auction by the sheriff of said county, in the manner provided by law, and according to the course and practice of this court, and that the said sheriff, after the time allowed by law for redemption has expired, execute a deed to the purchaser, or purchasers, of said premises on said sale.

That the sheriff, out of the proceeds of said sale, retain his fees, disbursements, and commissions on said sale, and pay to the plaintiff, or his attorney, out of said proceeds, the sum of four hundred and fifty-five dollars, principal, eleven dollars and eighty cents costs of preparing and recording said liens, attorney fees in the sum of one hundred and fifty dollars, and costs of this suit, taxed at six dollars and seventy-five cents, with interest thereon at the rate of seven per cent. per annum from the date of this decree.

It is further adjudged and decreed that the purchaser of said sale be let into possession thereof. That if the money arising from said sale be insufficient to pay the amount so found due to plaintiff as above stated, with interest and costs and expenses of sale, as aforesaid, the sheriff specify the amount of such deficiency and balance

due to the plaintiff in his return, and that, on coming in and filing of said return, the clerk of this court docket a judgment for such balance against said defendant, with interest thereon at the rate of seven per cent. per annum, from the date of said last-mentioned return and judgment, and that the plaintiff have execution therefor.

The lands and premises directed to be sold in this decree are situated, lying and being in the Nevada mining district, county of Nevada, said State, and bounded and particularly described
47 as follows, to wit: being commonly known as the "Nevada City and Nevada City Extension quartz mines," and being designated according to the United States system of mineral land surveys as mineral lot 85, of section 11, township 16 north, of range 8 east, M. D. M., and lot No. 101, of sections 2 and 11, township 16 north, range 8 east, M. D. M., and also surface ground in connection therewith, together with all hoisting works, mills, machinery and mining appliances and appurtenaces thereto belonging.

Done in open court, this June 15, A. D. 1896.

JOHN CALDWELL,
Superior Court.

(Endorsed:) Service of the within answer by copy, accepted this second day of February, 1898. Thos. S. Ford, attorney for plaintiff. Filed February 4, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

48 In the Superior Court of the United States, Northern District of California. In Equity.

FREDERICK WILLIAMS, Trustee, Plaintiff,
vs.
THE GOLD HILL MINING COMPANY (a Corporation), GEORGE C. Gaylord, Chas. E. Maddrill, and Dwight T. Rolfe, Defendants.

Answer of George C. Gaylord.

The answer of George C. Gaylord, one of the above-named defendants, to the bill of complaint of the above-named plaintiff.

Defendant admits that the Gold Hill Mining Company, in said bill of complaint styled "the mining company," was, on and prior to the first day of July, 1890, a corporation duly created and constituted under and by virtue of the laws of the State of West Virginia, and was duly authorized and empowered to own the property described in said bill of complaint, and to engage in the business for which it was formed, and execute and deliver the bonds in said bill of complaint mentioned, and also was empowered to ex-
49 ecute and deliver the mortgage or trust deed mentioned in said bill of complaint, provided the execution and delivery of said mortgage or trust deed was ratified by the holders of at least two-thirds of the capital stock of said corporation, such ratification having been made either in writing, signed and acknowledged by

such stockholders, or by resolution, duly passed at a stockholders' meeting called for that purpose, and not otherwise.

Defendant avers on information and belief that no such ratification was had; that without such ratification, in manner and form aforesaid, said mortgage or trust deed created no lien whatever upon the premises and property described in said bill of complaint, or any part thereof.

Defendant further avers that the title to said mining claim and premises described in said bill of complaint *were* acquired by said corporation on the twenty-fourth day of June, 1890, and that M. J. Shoecraft, whose name appears signed to the mortgage or trust deed, annexed as Exhibit "A" to said bill of complaint, was not the president of said corporation at the date thereof, to wit, July 1, 1890, nor was C. Littlefield, whose name appears signed to said Exhibit "A" as secretary of said corporation, the secretary thereof on said July 1, 1890, and defendant, upon information and belief, denies that said mortgage or trust deed was duly or otherwise executed by the president and secretary, or by the president or secretary of said corporation, or that the same was executed by said corporation, or that by virtue of said mortgage or trust deed the premises described in said bill of complaint were granted, bargained, sold, released, aliened or conveyed to G. Livingstone Morse, trustee, or the plaintiff, or that by virtue thereof any lien whatever
50 was created upon said mining claims and premises in favor of either said G. Livingston Morse or plaintiff as trustee, or otherwise.

As to the allegations contained in subdivtsion four of said bill of complaint—"That said mortgage or deed of trust was authorized, made, executed and delivered in all respects in conformity with law"—defendant denies, upon information and belief, that said mortgage or deed of trust was authorized, made, executed or delivered in all respects in conformity with law.

Denies that the same was executed by any person whatever authorized to do —, or that the same was ratified by holders of two-thirds of the capital stock of said corporation.

Further answering, defendant avers:

That, as to the allegations contained in the fifth subdivision of said bill of complaint, defendant has no positive knowledge or information as to the number of or aggregate amount of the bonds therein described, have been legally or otherwise issued, negotiated or sold, or to whom, or if any person or persons are *bona fide* holders thereof as purchasers thereof for value, or if any or how many thereof are outstanding, or how many, if any, are valid, binding obligations against said mining company. Therefore, defendant denies, upon information and belief, that all of said one hundred bonds have been fully issued, negotiated or sold, but, on the contrary, defendant, upon information and belief, denies that said bonds have all been sold or otherwise disposed of to *bona fide* holders thereof, for value, or that any number of said bonds, over fifty in number, were fully issued, negotiated or sold to any person
51 or persons, or that any greater number thereof are now out-

standing, valid or binding obligations against said mining company.

Defendant further denies upon information and belief, that the defendant mining company is indebted in the sum of two thousand five hundred dollars, semi-annual interest, on account of said bonds for each or any half year since July 1, 1893, or prior thereto, but defendant avers that, if there are any bonds outstanding upon which interest is due and unpaid, the amount of such interest does not exceed twelve hundred and fifty dollars, semi-annually.

Defendant denies, upon information and belief, that upon July 1, 1895, the sum of fifty thousand dollars principal, or said principal sum and interest thereon, became due and payable, but, on the contrary, defendant avers that if any portion of said principal sum and interest thereon became due and payable on said date, the amount thereof did not exceed the sum of twenty-five thousand dollars principal and interest thereon from July 1, 1893.

Further answering, defendant admits that he is a citizen and resident as stated in said bill of complaint, and has some claim or lien upon the property and premises described in said bill of complaint; denies, upon information and belief, that such claim of defendant has accrued subsequently to the lien of said mortgage described in said complaint, or that the claim of defendant is subject or subordinate thereto, and in support of the claim of defendant, defendant avers:

That on December 4, 1896, upon proceedings duly had and taken, he received a judgment in the superior court of the county of
52 Nevada, State of California, against said Gold Hill Mining Company for the sum of twelve thousand four hundred and thirty-nine dollars and twenty cents, and eight dollars, cost of suit, said judgment being in words and figures following, viz:

"In the Superior Court of the County of Nevada, State of California.

GEORGE C. GAYLORD, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant.

Judgment of Dec. 4, 1896.

In this action, the defendant, Gold Hill Mining Company (a corporation), having been regularly served with process, and having failed to appear and answer the plaintiff's complaint filed herein, and the legal time for answering having expired, and the default of the said defendant in the premises having been duly entered according to law:

Now, at this day, on application of J. M. Walling, Esq., attorney for said plaintiff, George C. Gaylord, ordered that judgment be entered herein against the said defendant, Gold Hill Mining Company (a corporation) in accordance with the prayer of said plaintiff's complaint on file herein.

Wherefore, by reason of the law and the premises aforesaid,
53 it is ordered, adjudged and decreed, that George C. Gaylord, plaintiff, do have and recover of and from said defendant,

Gold Hill Mining Company (a corporation), the sum of twelve thousand four hundred and thirty-nine and twenty-six one-hundredths dollars, together with said plaintiff's costs and disbursements incurred in said action, amounting to the sum of eight dollars, with interest thereon at the rate of seven per cent. per annum from the date hereof till paid.

Dated Dec. 4, 1896.

J. J. GREANY,
County Clerk.

(Endorsed:) No. 2501. Superior court, county of Nevada. George C. Gaylord, plaintiff, against Gold Hill Mining Company (a corporation), defendant. Judgment by default. Filed Dec. 4, 1896. J. J. Greany, clerk. Entered in Judgment Book 3, page 298."

And having been duly entered and docketed as a judgment of said court, December 4, 1896.

That said judgment has not been appealed from, modified, vacated or set aside, but still remains in full force and virtue.

That subsequent to the entry of said judgment, defendant caused an execution in due form of law to issue thereon, and placed the same in the hands of the sheriff of said county of Nevada, and thereafter such proceedings were taken and had by said sheriff, as provided by statute in such cases made and provided, that said mining claims and premises, as described in the bill of complaint,
54 were duly sold by said sheriff under and by virtue of said execution on October 30, 1897, and at such sale this defendant became the purchaser thereof for the sum of thirteen thousand three hundred and thirty-one dollars and eighty-two cents, he being the highest bidder at such sale, and thereupon said sheriff duly issued and delivered to defendant a certificate of sale in due form of law, and defendant is now the owner and holder of said certificate of sale, no redemption having been made.

That on the twenty-ninth day of October, 1897, in the superior court of the county of Nevada, aforesaid, and, after proceedings duly had, defendant recovered a second judgment against said Gold Hill Mining Company, for the sum of four thousand five hundred and four dollars and eighty-seven cents, principal, and six dollars and seventy-five cents, costs of suit, which said judgment was duly entered and docketed as a judgment of said court on said October 29, 1897. That said judgment constitutes a lien upon the mining claims and premises described in the bill of complaint herein; that defendant is the owner and holder thereof, and such judgment is wholly unsatisfied; said judgment being in words and figures following:

55 "In the Superior Court of the County of Nevada, State of California.

GEORGE C. GAYLORD, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant.

Judgment of Oct. 29, 1897.

In this action, the defendant, Gold Hill Mining Company (a corporation), having been regularly served with process, and having failed to appear and answer the plaintiff's complaint filed herein, and *that* the legal time for answering having expired, and the default of the said defendant in the premises having been duly entered according to law:

Now, at this day, on application of J. M. Walling, Esq., attorney for said plaintiff, George C. Gaylord, ordered that judgment be entered herein against the said defendant, Gold Hill Mining Company (a corporation), in accordance with the prayer of said plaintiff's complaint on file herein.

Wherefore, by reason of the law and the premises aforesaid, it is ordered, adjudged and decreed, that George C. Gaylord, plaintiff, do have and recover of and from said defendant, Gold Hill Mining Company (a corporation), the sum of four thousand five hundred
56 four and eighty-seven one-hundredths ($4,504.87) dollars, together with said plaintiff's costs and disbursements incurred in said action, amounting to the sum of ($6.75) six and seventy-five one-hundredths dollars, with interest thereon at the rate of seven per cent. per annum, from date thereof till paid.

Dated October 29, 1897.

[SEAL.]

J. J. GREANY,
County Clerk,
By J. C. NILON,
Deputy Clerk.

(Endorsed): No. 2690. Superior court, county of Nevada. George C. Gaylord, plaintiff, against Gold Hill Mining Company (a corporation), defendant. Judgment by default. Filed October 29, 1897. J. J. Greany, clerk, by J. C. Nilon, deputy. Entered in Judgment Book No. 3, page 412."

which said judgment has not been appealed from, vacated or reversed, but still remains in full force and effect.

Further answering, defendant denies, upon information and belief, that said mortgage or trust deed was given to secure the purchase price of the property, but, on the contrary, defendant avers that the property had been purchased and paid for before the execution or delivery of either said mortgage or trust deed, or said bonds, or either of them; and denies that any considerable portion of money was used and appropriated, or used or appropriated, as a working capital to

start said mine, the exact amount so appropriated, if any, being unknown to defendant.

57 Wherefore, having fully answered, defendant asks that it be decreed that plaintiff has no lien upon the mines and premises described in the bill of complaint herein; that defendant's claim of lien is prior and paramount to the claims of plaintiff; that the amount due and to become due upon account of said bonds and interest, if any, be determined, and that defendant have such other further or different relief herein as may seem meet and agreeable to equity.

J. M. WALLING,
Solicitor and Counsel for George C. Gaylord,
Nevada City, California.

STATE OF CALIFORNIA,
County of Nevada, Northern District of California, } ss:

George C. Gaylord, being duly sworn, says that he is one of the defendants herein; that the foregoing answer is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes them to be true.

GEORGE C. GAYLORD.

Subscribed and sworn to before me this twenty-ninth day of January, 1898.

F. T. NILON,
Judge of the Superior Court in and for the
County of Nevada, State of California.

58 (Endorsed:) Service of the within answer, by copy, accepted this second day of February, 1898. Thos. S. Ford, attorney for plaintiff. Filed February 4, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

In the United States Circuit Court, Ninth Circuit, Northern District of California.

FREDERICK WILLIAMS, Trustee, Plaintiff,
vs.
GOLD HILL MINING COMPANY (Corporation) ET AL., Defendants.

Replication to Answer of Charles E. Maddrill and Dwight T. Rolfe.

The replication of the above-named plaintiff to the answer of defendants Charles E. Maddrill and Dwight T. Rolfe.

This replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendants, for replication thereunto, sayeth that he does and will ever maintain and prove his said bill to be true, certain,
59 and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain,

evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, confessed, or avoided, traversed, or denied, is true: all — matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly — as in and by his said bill he has already prayed.

THOS. S. FORD,
Solicitor for Plaintiff.

C. WALTER ARTZ, *Of Counsel.*

(Endorsed:) Filed February 7, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy.

In the United States Circuit Court, Ninth Circuit, Northern District of California.

FREDERICK WILLIAMS, Trustee, Plaintiff,
vs.
GOLD HILL MINING COMPANY (Corporation) ET AL., Defendants.

Replication to Answer of George C. Gaylord.

The replication of the above-named plaintiff to the answer of defendant, George C. Gaylord.

60 This replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereunto sayeth, that he does and will ever maintain and prove his said bill to be true, certain, and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, confessed, or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly — as in and by his said bill he has already prayed.

THOS. S. FORD,
Solicitor for Plaintiff.

C. WALTER ARTZ, *Of Counsel.*

(Endorsed:) Filed February 7, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy.

61 In the United States Circuit Court, Ninth Circuit, Northern District of California.

FREDERICK WILLIAMS, Trustee, Plaintiff,
vs.
GOLD HILL MINING COMPANY (Corporation) ET AL., Defendants.

Affidavit of Service of Replications.

STATE OF CALIFORNIA, *County of Nevada,* } ss:

Thos. S. Ford, being first duly sworn, deposes and says: That he is solicitor for plaintiff in the above-entitled cause. On the seventh day of February, 1898, at the hour of 2.30 o'clock p. m., of that day, he personally served copies of the replications of plaintiff to the answers of Gaylord, and Rolfe and Maddrill, in this action, by personally delivering copies of the replications so filed in this court on that day, to J. M. Walling, the solicitor for said defendants, at the place of his residence, at Nevada City, Nevada county, California, by delivering to and leaving with said Walling said copies personally.

THOS. S. FORD.

62 Subscribed and sworn to before me this seventh day of February, 1898.

Attest: The seal of this court of record.

F. T. NILON,
Judge of the Superior Court of Nevada County, California.

(Endorsed:) Filed February 9, 1898. Southard Hoffman, clerk.

At a stated term, to wit, the March term, A. D. 1898, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room in the city and county of San Francisco, on Tuesday, the fifth day of July in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The Honorable William M. Morrow, circuit judge.

FREDERICK WILLIAMS, Trustee, etc.,
vs.
GOLD HILL MINING CO. ET AL. } No. 12531.

Order Overruling Plea.

The plea of defendants, George C. Gaylord, Charles E. Maddrill and Dwight T. Rolfe, having heretofore been heard and submitted to the court for consideration and decision, and having been fully considered, and the opinion of the court having been filed, it is in accordance with said opinion ordered that said plea be and hereby is overruled.

63 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

FREDERICK WILLIAMS, Trustee, Plaintiff,
vs.
THE GOLD HILL MINING COMPANY (a Corporation), GEORGE C. Gaylord, Chas. E. Maddrill, and Dwight T. Rolfe, Defendants.

Notice of Motion for Leave to File Amended Answer.

Please take notice that on Monday, August 22, 1898, at the court-room of said court, in the city of San Francisco, said State, at the hour of ten o'clock a. m., of said day, or as soon thereafter as counsel can be heard, defendant will move the court for leave to file an amended answer in the above-entitled cause, a copy of which said amended answer is served herewith.

Dated August 16, 1898.

J. M. WALLING,
Attorney for Defendants.

To complainant and Thos. S. Ford, attorney for plaintiff.

(Endorsed:) Service of the within copy admitted this sixteenth day of August, 1898. Filed August 22, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

64 At a stated term, to wit, the July term, A. D. 1898, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room in the city and county of San Francisco, on Monday, the twenty-ninth day of August, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The Honorable James H. Beatty, district judge district of Idaho, designated to hold and holding circuit court for the northern district of California.

FREDERICK WILLIAMS
vs.
GOLD HILL MINING COMPANY ET AL. } No. 12531.

Order Granting Leave to File Amended Answer.

In this cause, the motion of the defendant for leave to file an amended answer came on duly before the court, and it was ordered that the said leave be and hereby is granted, no one opposing said motion.

65 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

FREDERICK WILLIAMS, Trustee, Plaintiff,
vs.
THE GOLD HILL MINING COMPANY (a Corporation), GEORGE C. Gaylord, Chas. E. Maddrill, and Dwight T. Rolfe, Defendants.

Amended Answer of Chas. E. Maddrill and Dwight T. Rolfe.

The answer of Charles E. Maddrill and Dwight T. Rolfe, two of the above-named defendants, to the bill of complaint of the above-named plaintiff.

By leave of court, first had and obtained, defendants file this, their amended answer:

Defendants admit that the Gold Hill Mining Company, in said bill of complaint styled "the mining company," was on and prior to the first day of July, 1890, a corporation duly created and constituted under and by virtue of the laws of the State of West Virginia, and was fully authorized and empowered to own the property described in said bill of complaint, and to engage in the business for which it was organized.

66 Deny that it was authorized to issue or make the bonds in said bill of complaint mentioned, or authorized or empowered to execute or deliver the mortgage or trust deed mentioned in said bill of complaint.

Defendants aver that at the date of said mortgage and bonds mentioned in said bill of complaint, said "the mining company," had its principal office and was doing business in the city of New York, State of New York. That the bonds and mortgage mentioned were made, executed and delivered in said State of New York. That said bonds and mortgage were and are payable in said State of New York.

That under and by virtue of the provisions of section 4, article 2 of the by-laws of said corporation, no person was on July 1, 1890, eligible for election to the board of directors of said corporation unless he was at the time a *bona fide* holder of one hundred shares of the capital stock of the company at the time of his election. Defendants aver, upon information and belief, that none of the persons claiming to be directors of said corporation and who acted as such at the date of said mortgage, or at the date of the delivery thereof, or at the time of the adoption of the resolution authorizing its execution, or the execution of the bonds mentioned in said bill of complaint, were the owners of one hundred, or any other number of shares, of the capital stock of said corporation, as required by the provisions of section 4, article 2 of the by-laws of said corporation. That by the provisions of Code, ch. 53, 49, of the laws of West Virginia, a director of a corporation is required to be, and must be a

stockholder of the corporation. Deny that there was any board
67 of directors of said corporation at the date of the adoption of the resolution attempting the authorization or the execution of the mortgage and bonds mentioned in the bill of complaint herein. Denies upon like information and belief that at the date of the pretended authorization of said mortgage and bonds there were any stockholders of said corporation, whatever, or that at the date thereof any stock of said corporation had been issued to any person whatever, or that any person or persons were authorized to vote for the election of any directors of said corporation, or that any board of directors were elected by any stockholders of said company, or that any of the persons who pretended to authorize the president and secretary of said corporation to execute and deliver said mortgage and bonds were either directors or stockholders of said corporation, or authorized to represent or bind said corporation in any manner whatever. Deny that at the date of said attempted authorization said corporation had any president or secretary duly or otherwise elected or authorized to represent said corporation in any matter whatever.

Further answering, defendants aver on information and belief:

That at the date of said mortgage and bonds described in the bill of complaint herein, and at the date of the attempted authorization of the execution thereof, said corporation was not indebted, and said mortgage and bonds were not executed for the benfit of said corporation. On the contrary, said mortgage and bonds were attempted to be authorized and executed expressly in the interest of,
68 and solely for the benefit of, the persons who pretended to represent said corporation as stockholders and directors at the date when it is averred said mortgage and bonds were authorized. That no consideration had been received by said corporation from any of the persons in whose benefit said mortgage and bonds were in fact issued, nor was said corporation at that date indebted to said pretended stockholders, officers or directors of any account whatever.

That the execution and delivery of said mortgage and bonds were authorized, if at all, only by the votes of the pretended stockholders or directors of said corporation, each one of whom was directly, personally and financially interested therein, and were to and did receive the full benefit thereof. That by reason of the foregoing facts said mortgage and bonds, and each of them, were and are fraudulent and void.

Further answering, defendants aver:

That The Gold Hill Mining Company, corporation defendant, is a mining corporation organized for the purpose of owning, operating and working the mining claims described in the bill of complaint, which said mining claims are situated in Nevada county, State of California.

That the mortgage or trust deed set out in said bill of complaint and alleged to have been executed by said corporation, was not ratified by the holders of at least two-thirds of the capital stock of said corporation, either in writing, signed and acknowledged by such stockholders, or by resolution duly passed at a stockholders' meet-

ing called for that purpose, as required by the provisions of
69 an act of the legislature of the State of California, approved April 23, 1880, entitled "An act for the further protection of stockholders in mining companies."

Defendants further aver that the title to said mining claim and premises, described in said bill of complaint, *were* acquired by said corporation on the twenty-fourth day of June, 1890, and that M. J. Shoecraft, whose name appears signed to the mortgage or trust deed, annexed as Exhibit "A" to said bill of complaint, was not the president of said corporation at the date thereof, to wit, July 1, 1890, nor was C. Littlefield, whose name appears signed to said Exhibit "A" as secretary of said corporation, the secretary thereof on said July 1, 1890, and defendants, upon information and belief, deny that said mortgage or trust deed was duly or otherwise executed by the president and secretary, or by the president or secretary of said corporation, or that the same was executed by said corporation, or that by virtue of said mortgage or trust deed the premises described in said bill of complant were granted, bargained, sold, released, aliened or conveyed to G. Livingston Morse, trustee, or the plaintiff, or that by virtue thereof any lien whatever was created upon said mining claims and premises in faver of either said G. Livingston Morse, or plaintiff, as trustee, or otherwise.

As to the allegations contained in subdivision four of said bill of complaint—"That said mortgage or deed of trust was authorized, made, executed and delivered in all respects in conformity with law," defendants deny, upon information and belief, that said mortgage or deed of trust was authorized, made, executed or delivered in all respects in conformity with law.

70 Deny that the same was executed by any person whatever authorized so to do, or that the same was ratified by the holders of two-thirds of the capital stock of said corporation.

Further answering, defendants aver:

That as to the allegations contained in the fifth subdivision of said bill of complaint, defendants have no possible knowledge or information as to the number of or aggregate amount of the bonds therein described, which have been legally or otherwise issued, negotiated or sold, or to whom, or if any person or persons are *bona fide* holders thereof, as purchasers thereof for value, or if any, or how many thereof are outstanding, or how many, if any, are valid, binding obligations against said mining company. Therefore, defendants deny, upon information and belief, that all of said one hundred bonds have been fully issued, negotiated or sold, but on the contrary, defendant, upon information and belief, denies that said bonds have all been sold or otherwise disposed of to *bona fide* holders thereof, for value, or that any number of said bonds were fully issued, negotiated or sold to any person or persons, or that any thereof are now outstanding, valid or binding obligations against said mining company.

Defendants further deny upon information and belief that the defendant mining company is indebted in the sum of twenty-five

hundred dollars, semi-annual interest, on account of said bonds, for each or any half year since July 1, 1893, or prior thereto.

Defendant denies, upon information and belief, that upon
71 July 1, 1895, the sum of fifty thousand dollars principal, or said principal sum and interest thereon, became due and payable.

Further answering, defendants admit that they are residents and citizens as stated in said bill of complaint, and have some claim or lien upon the property and premises described in said bill of complaint; deny, upon information and belief, that such claim of defendants *have* accrued subsequently to the lien of said mortgage described in said complaint, or that the claims of defendants are subject or subordinate thereto, and, in support of the claim of defendants, defendants aver:

That on June 15, 1896, upon proceedings duly had and taken, he recovered a judgment in the superior court of the county of Nevada, State of California, against said Gold Hill Mining Company for the sum of six hundred and three dollars and fifty-five cents, and five dollars and ninety cents costs of suit, said judgment being in words and figures following, viz:

In the Superior Court, County of Nevada, State of California.

CHARLES MADDRILL, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant.

Judgment of June 15, 1896.

This cause came on regularly to be heard in open court on
72 this fifteenth day of June, A. D. 1896, J. M. Walling, Esq., appearing for plaintiff, the defendant not appearing. The court having heard all the evidence in the case, and the proofs adduced, and it duly appearing that the default of the defendant, for not answering herein, has been duly noted, and after duly considering the same, and being fully advised in the premises, and it appearing therefrom to the court:

First. That the Gold Hill Mining Company (a corporation) has duly appeared herein by attorney, and has failed to file an answer herein within the time allowed by the court.

Second. That on January 29, 1896, said defendant was indebted to the plaintiff on account of work and labor performed by said plaintiff for defendant at the special instance and request of said defendant, as a miner, upon those certain mining claims and premises, as alleged in the complaint herein. That on, to wit, February 25, 1896, said plaintiff duly filed and recorded with the county recorder of said county, being the county wherein the property was situated, his claim, duly verified by his oath, containing a statement of plaintiff's demands, after deducting all just claims and offsets, with the name of the owner, and also the name of the person who employed plaintiff to perform said work and labor, with a statement of the terms, time given, and conditions of the contract,

and also a description of the property sought to be charged with said lien, sufficient for identification. That all the allegations of the complaint are true.

That there is still due and owing from said defendant to said plaintiff, on account of said lien, the sum of five thousand,
73 two hundred and fifty-two dollars, and the further sum of five dollars and ninety cents, costs of preparing and filing said lien.

Three. That on January 31, 1896, said defendant was indebted to D. T. Rolfe, on account of work and labor performed by said Rolfe for defendant, at the special instance and request of said defendant, as a miner, upon those certain mining claims and premises described in the complaint herein, and as alleged in said complaint. That on, to wit, Feb. 29, 1896, said Rolfe duly filed and recorded with the county recorder of said county, being the county wherein the property was situated, his claim, duly verified by his oath, containing a statement of his demand, after deducting all just claims and offsets, with the name of the owner, and also the name of the person who employed said Rolfe to perform said work and labor, with a statement of the terms, time given, and conditions of said contract, and also a description of the property sought to be charged by said lien, sufficient for identification. That, prior to the filing of the complaint herein, said Rolfe, for a valuable consideration, duly assigned said claim of lien to plaintiff. That said Rolfe expended in the preparation and filing said lien the sum of five dollars and ninety cents. That there is due to plaintiff on account of said lien the sum of one hundred and eighty-three dollars, and five dollars and ninety cents for preparing and filing the same. That all the allegations of said complaint relative to said last-mentioned lien are true, except that there has been paid on account thereof the further sum of eight dollars, leaving the balance due one hundred and eighty-three dollars instead of one hundred and ninety-one dollars, as alleged therein.

74 Fourth. That the sum of one hundred and fifty dollars is a reasonable sum to be allowed plaintiff as attorney fee on foreclosure.

Now, therefore, on motion of J. M. Walling, Esq., attorney for said plaintiff, it is adjudged and decreed that said liens be foreclosed, that all and singular the premises mentioned and described in said complaint and said liens, and hereinafter described, or so much thereof as may be necessary to raise the amount due plaintiff for principal and interest, attorney fees and costs of this suit, and the expenses of sale, be sold at public auction by the sheriff of said county in the manner provided by law, and according to the course and practice of this court, and that the said sheriff, after the time allowed by law for redemption has expired, execute a deed to the purchaser or purchasers of said premises on said sale. That the sheriff, out of the proceeds of said sale, retain his fees, disbursements, and commissions on said sale, and pay to the plaintiff or his attorney, out of said proceeds, the sum of four hundred and thirty-five dollars, principal, eleven dollars and eighty cents, cost of pre-

paring and recording said liens, attorney fees in the sum of one hundred and fifty dollars, and costs of this suit, taxed at six dollars and seventy-five cents, with interest thereon at the rate of seven per cent. per annum from the date of this decree. It is further adjudged and decreed that the purchaser at said sale be let into the possession thereof. That, if the amount of money arising from said sale be insufficient to pay the amount so found due the plaintiff as above stated, with interest, and costs, and expenses of sale, as aforesaid, the sheriff specify the amount of such deficiency
75 and balance due to the plaintiff in his return, and that, on coming in and filing of said return, the clerk of this court docket a judgment for such balance against said defendant, with interest thereon at the rate of seven per cent. per annum, from the date of said last-mentioned return and judgment, and that the plaintiff have execution therefor. The lands and premises directed to be sold in this decree are situated, lying and being in the Nevada mining district, county of Nevada, said State, and bounded and particularly described as follows, to wit: Being commonly known as the Nevada City and Nevada City Extension quartz mines, and being designated according to the United States system of mineral land surveys, as mineral lot 85, of section 11, township 16 north, 8 east, M. D. M., and lot No. 101 of sections 2 and 11, township 16 north, range 8 east, M. D. M., and also all surface ground in connection therewith, together with all hoisting works, mills, machinery and mining appliances and appurtenances thereto belonging.

Done in open court this June 15, A. D. 1896.

JOHN CALDWELL,
Superior Judge.

(Endorsed.)

That said judgment has not been appealed from, modified, vacated or set aside, but still remains in full force and virtue.

That subsequent to the entry of said judgment, defendant caused an execution in due form of law to issue thereon, and placed the same in the hands of the sheriff of said county of Nevada, and
76 thereafter such proceedings were taken and had by said sheriff, as provided by statute in such cases made and provided, that said mining claims and premises as described in the bill of complaint, were duly sold by said sheriff, under and by virtue of said execution, on October 26, 1897, and at such sale this defendant and Dwight T. Rolfe became the purchasers thereof for the sum of six hundred and seventy-five dollars and twenty-five cents, they being the highest bidders at such sale, and thereupon said sheriff duly issued and delivered to defendant a certificate of sale, in due form of law, and defendants are now the owners and holders of said certificate of sale, no redemption having been made.

Further answering, defendants deny, upon information and belief, that said mortgage or trust deed was given to secure the purchase price of the property, but, on the contrary, defendants aver that the property had been purchased and paid for before the execution or delivery of either said mortgage or trust deed, or said bonds or either

of them; and deny that any considerable portion of the money was used and appropriated, or used or appropriated, or used as a working capital to start said mine, the exact amount so appropriated, if any, being unknown to defendants.

Wherefore, having fully answered, defendants ask that it be decreed that plaintiff has no lien upon the mines and premises described in the bill of complaint herein; that defendants' claims of lien are prior and paramount to the claims of plaintiff; that the amount due and to become due upon account of said bonds and interest, if any, be determined, and that defendant have such
77 other, further, or different relief herein as may seem meet and agreeable to equity.

J. M. WALLING,
Solicitor and Counsel for Chas. E. Maddrill and Dwight T. Rolfe, Nevada City, California.

I hereby certify that the foregoing amended answer is, in my opinion, well founded in point of law.

J. M. WALLING,
Solicitor and Counsel for Chas. E. Maddrill and Dwight T. Rolfe.

STATE OF CALIFORNIA,
County of Nevada, Northern District of California, } ss:

Dwight T. Rolfe, being duly sworn, saws that he is one of the defendants herein. That the foregoing amended answer is true of his own knowledge, except as to the matters which are therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

DWIGHT T. ROLFE.

Subscribed and sworn to before me this sixteenth day of August, 1898.

[Seal of Court.]

F. T. NILON,
Judge of the Superior Court in and for the County of Nevada, State of California.

(Endorsed:) Service of the within copy admitted this sixteenth day of August, 1898. Filed August 29, 1898. Southard Hoffman, clerk.

78 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California. In Equity.

FREDERICK WILLIAMS, Trustee, Plaintiff,
vs.
THE GOLD HILL MINING COMPANY (a Corporation), GEORGE C. Gaylord, Charles E. Maddrill, and Dwight T. Rolfe, Defendants.

Amended Answer of George C. Gaylord.

The answer of George C. Gaylord, one of the above-named defend ants, to the bill of complaint of the above-named plaintiff.

By leave of court, first had and obtained, defendant files this, his amended answer.

Defendant admits that the Gold Hill Mining Company, in said bill of complaint styled the mining company, was on and prior to the first day of July, 1890, a corporation duly created and constituted under and by virtue of the laws of the State of West Virginia, and was fully authorized and empowered to own property described in said bill of complaint, and to engage in the business for which it was organized.

79 Denies that it was authorized to issue or make the bonds in said bill of complaint mentioned, or authorized or empowered to execute or deliver the mortgage or trust deed mentioned in said bill of complaint.

Defendant avers that at the date of said mortgage and bonds mentioned in said bill of complaint, said "the mining company" had its principal office, and was doing business in the city of New York, State of New York. That the bonds and mortgage mentioned were made, executed and delivered in said State of New York. That said bonds and mortgage were and are payable in said State of New York.

That, under and by virtue ef the provisions of section 4, article 2, of the by-laws of said corporation, no person was, on July 1, 1890, eligible for election to the board of directors of said corporation unless he was, at the time, a *bona fide* holder of one hundred shares of the capital stock of the company at the time of his election. Defendant avers, upon information and belief, that none of the persons claiming to be directors of said corporation, and who acted as such at the date of said mortgage, or at the date of the delivery thereof, or at the time of the adoption of the resolution authorizing its execution, or the execution of the bonds mentioned in said bill of complaint, were the owners of one hundred or any other number of shares of the capital stock of said corporation as required by the provisions of section 4, article 2, of the by-laws of said corporation. That, by the provisions of Code ch. 53 49 of the Laws of West Virginia, a director of a corporation is required to be, and must be, a stockholder of the corporation. Denies that there was any

80 board of directors of said corporation at the date of the adoption of the resolution attempting the authorization or the

execution of the mortgage and bonds mentioned in the bill of complaint herein. Denies, upon like information and belief, that at the date of the pretended authorization of said mortgage and bonds there were any stockholders whatever of said corporation, or that, at the date thereof, any stock of said corporation had been issued to any person whatever, or that any person or persons were authorized to vote for the election of any directors of said corporation, or that any board of directors were elected by any stockholder of said company, or that any of the persons who pretended to authorize the president and secretary of said corporation to execute and deliver said mortgage and bonds were either directors or stockholders of said corporation, or authorized to represent or bind said corporation in any manner whatever. Denies that, at the date of said attempted authorization said corporation had any president or secretary duly or otherwise elected or authorized to represent said corporation in any manner whatever.

Further answering, defendant avers, on information and belief:

That at the date of said mortgage and bonds described in the bill of complaint herein, and at the date of the attempted authorization of the execution thereof, said corporation was not indebted, and said mortgage and bonds were not executed for the benefit of said corporation. On the contrary, said mortgage and bonds were attempted to be authorized and executed expressly in the
81 interest of, and solely for the benefit of, the persons who pretended to represent said corporation as stockholders and directors at the date when it is averred said mortgage and bonds were authorized. That no consideration had been received by said corporation from any of the persons in whose interest said mortgage and bonds were in fact issued, nor was said corporation, at that date, indebted to said pretended stockholders, officers, or directors, on any account whatever.

That the execution and delivery of said mortgage and bonds were authorized, if at all, only by the votes of the pretended stockholders or directors of said corporation, each one of whom was directly, personally, and financially interested therein, and were to and did receive the full benefit thereof. That, by reason of the foregoing facts, said mortgage and bonds, and each of them, were and are fraudulent and void.

Further answering, defendant avers:

That The Gold Hill Mining Company, corporation defendant, is a mining corporation organized for the purpose of owning, operating and working the mining claims described in the bill of complaint, which said mining claims are situate in Nevada county, State of California.

That the mortgage or trust deed set out in said bill of complaint, and alleged to have been executed by said corporation, was not ratified by the holders of at least two-thirds of the capital stock of said corporation, either in writing, signed and acknowledged by such stockholders, or by resolution duly passed at a stockholders'
82 meeting called for that purpose, as required by the pro-

visions of an act of the legislature of the State of California, approved April 23, 1880, entitled "An act for the further protection of stockholders in mining companies."

Defendant further avers that the title to said mining claims and premises described in said bill of complaint were acquired by said corporation on the twenty-fourth day of June, 1890, and that M. J. Shoecraft, whose name appears signed to the mortgage or trust deed, annexed as Exhibit "A" to said bill of complaint, was not the president of said corporation at the date thereof, to wit, July 1, 1890, nor was C. Littlefield, whose name appears signed to said Exhibit "A" as secretary of said corporation, the secretary thereof on said July 1, 1890, and defendant, upon information and belief, denies that said mortgage or trust deed was duly or otherwise executed by the president and secretary, or by the president or secretary of said corporation, or that the same was executed by said corporation, or that by virtue of said mortgage or trust deed the premises described in said bill of complaint were granted, bargained, sold, released, aliened or conveyed to G. Livingston Morse, trustee, or the plaintiff, or that by virtue thereof any lien whatever was created upon said mining claims and premises in favor of either said G. Livingston Morse or plaintiff as trustee, or otherwise.

As to the allegations contained in subdivision four of said bill of complaint—"That said mortgage or deed of trust was authorized, made, executed, and delivered in all respects in conformity with law," defendant denies, upon information and belief, that said mortgage or deed of trust was authorized, made, executed, or delivered in all respects in conformity with law.

83 Denies that the same was executed by any person whatever authorized so to do, or that the same was ratified by the holders of two-thirds of the capital stock of said corporation.

Further answering, defendant avers:

That as to the allegations contained in the fifth subdivision of said bill of complaint, defendant has no positive knowledge or information as to the number of or aggregate amount of the bonds therein described, which have been legally or otherwise issued, negotiated or sold, or to whom, or if any person or persons are *bona fide* holders thereof as purchasers thereof for value, or if any or how many thereof are outstanding, or how many, if any, are valid, binding obligations against said mining company. Therefore, defendant denies, upon information and belief, that all of said one hundred bonds have been fully issued, negotiated, or sold, but, on the contrary, defendant, upon information and belief, denies that said bonds have all been sold or otherwise disposed of to *bona fide* holders thereof, for value, or that any number of said bonds were fully issued, negotiated or sold to any person or persons, or that any thereof are now outstanding, valid or binding obligations against said mining company.

Defendant further denies, upon information and belief, that the defendant mining company is indebted in the sum of twenty-five hundred dollars, semi-annual interest on account of said bonds for each or any half year since July 1, 1893, or prior thereto.

Defendant denies, upon information and belief, that upon
84 July 1, 1895, the sum of fifty thousand dollars, principal, or said principal sum and interest thereon, became due and payable.

Further answering, defendant admits that he is a resident and citizen as stated in said bill of complaint, and has same claim or lien upon the property and premises described in said bill of complaint; denies, upon information and belief, that such claim of defendant has accrued subsequently to the lien of said mortgage described in said complaint, or that the claim of defendant is subject or subordinate thereto, and, in support of the claim of defendant, defendant avers:

That on December 4, 1896, upon proceedings duly had and taken, he recovered a judgment in the superior court of the county of Nevada, State of California, against said "Gold Hill Mining Company" for the sum of twelve thousand four hundred and thirty-nine dollars and twenty cents, and eight dollars, cost of suit, said judgment being in words and figures following, viz:

85 "In the Superior Court of the County of Nevada, State of California.

GEORGE C. GAYLORD, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant.

Judgment of December 4, 1896.

In this action, the defendant Gold Hill Mining Company (a corporation), having been regularly served with process, and having failed to appear and answer the plaintiff's complaint filed herein, and the legal time for answering having expired, and the default of the said defendant in the premises having been duly noted and entered according-, to wit:

Now, at this day, on the application of J. M. Walling, Esq., attorney for said plaintiff George C. Gaylord, ordered that judgment be entered herein against the said defendant Gold Hill Mining Company (a corporation), in accordance with the prayer of said plaintiff's complaint on file herein.

Wherefore, by means of the law and the premises aforesaid, it is ordered, adjudged, and decreed, that George C. Gaylord, plaintiff,
do have and recover of and from said defendant Gold Hill
86 Mining Company (a corporation), the sum of twelve thousand, four hundred and thirty-nine and twenty-six one-hundredths dollars, together with said plaintiff's costs and disbursements incurred in said action, amounting to the sum of eight dollars, with interest thereon at the rate of seven per cent. per annum from the date hereof till paid.

Dated Dec. 4, 1896.

J. J. GREANY,
County Clerk.

(Endorsed:) No. 2501. Superior court, county of Nevada, George C. Gaylord, plaintiff, against Gold Hill Mining Company (a corporation), defendant. Judgment by default. Filed Dec. 4, 1896. J. J. Greany, clerk. Entered in Judgment Book 3, page 298."

And, having been duly entered and docketed as a judgment of said court, December 4, 1896.

That said judgment has not been appealed from, modified, vacated or set aside, but still remains in full force and virtue.

That, subsequent to the entry of said judgment, defendant caused an execution in due form of law to issue thereon, and placed the same in the hands of the sheriff of said county of Nevada, and thereafter such proceedings were taken and had by said sheriff, as provided by statute in such cases made and provided, that said mining claims and premises, as described in the bill of complaint, were duly sold by said sheriff under and by virtue of said execution on
87 October 30, 1897, and at such sale this defendant became the purchaser thereof for the sum of thirteen thousand, three hundred and thirty-one dollars and eighty-two cents, he being the highest bidder at such sale, and thereupon said sheriff duly issued and delivered to defendant a certificate of sale in due form of law, and defendant is now the owner and holder of said certificate of sale, no redemption having been made.

That, on the twenty-ninth day of October, 1897, in the superior court of the county of Nevada, aforesaid, and after proceedings duly had, defendant recovered a second judgment against said Gold Hill Mining Company for the sum of four thousand five hundred and four dollars and eighty-seven cents, principal, and six dollars and seventy-five cents, costs of suit, which said judgment was duly entered and docketed as a judgment of said court on said October 29, 1897. That said judgment constitutes a lien upon the mining claims and premises described in the bill of complaint herein; that defendant is the owner and holder hereof, and such judgment is wholly unsatisfied; said judgment being in words and figures following:

88 "In the Superior Court of the County of Nevada, State of California.

GEORGE C. GAYLORD, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant.

Judgment of October 29, 1897.

In this action the defendant, Gold Hill Mining Company (a corporation), having been regularly served with process, and having failed to appear and answer the plaintiff's complaint filed herein, and *that* the legal time for answering having expired, and the default of the said defendant in the premises having been duly entered according to law:

Now, at this day, on application of J. M. Walling, Esq., attorney for said plaintiff, George C. Gaylord, ordered that judgment be entered herein against the said defendant, Gold Hill Mining Company (a corporation), in accordance with the prayer of said plaintiff's complaint on file herein.

Wherefore, by reason of the law and the premises aforesaid, it is ordered, adjudged and decreed, that George C. Gaylord, plaintiff, do have and recover of and from said defendant, Gold Hill
89 Mining Company (a corporation), the sum of four thousand five hundred, four and eighty-seven one-hundredths ($4,504.87) dollars, together with said plaintiff's costs and disbursements incurred in said action, amounting to the sum of ($6.75) six and seventy-five one-hundredths dollars, with interest thereon at the rate of seven per cent. per annum from date thereof till paid.

Dated October 29, 1897.

[SEAL.]

J. J. GREANY,
County Clerk,
By J. C. NILON,
Deputy Clerk.

(Endorsed:) No. 2690. Superior court, county of Nevada, George C. Gaylord, plaintiff, against Gold Hill Mining Company (a corporation), defendant. Judgment by default. Filed October 29, 1897. J. J. Greany, clerk, by J. C. Nilon, deputy. Entered in Judgment Book 3, page 412."

Which said judgment has not been appealed from, vacated, modified or reversed, but still remains in full force and effect.

Further answering, defendant denies, upon information and belief, that said mortgage or trust deed was given to secure the purchase price of the property, but, on the contrary, defendant avers that the property had been purchased and paid for before the execution or delivery of either said mortgage or trust deed, or said bonds or either of them; and denies that any considerable portion of the money was used and appropriated, or used or appropriated as a working capital to start said mine, the exact
90 amount so appropriated, if any, being unknown to defendant.

Wherefore, having fully answered, defendant asks that it be decreed that plaintiff has no lien upon the mines and premises described in the bill of complaint herein; that defendant's claims of lien are prior and paramount to the claims of plaintiff; that the amount due and to become due upon account of said bonds and interest, if any, be determined, and that the defendant have such other, further or different relief herein as may seem meet and agreeable to equity.

J. M. WALLING,
Solicitor and Counsel for George C. Gaylord,
Nevada City, California.

I hereby certify that the foregoing amended answer is, in my opinion, well founded in point of law.

J. M. WALLING,
Solicitor and Counsel for George C. Gaylord.

STATE OF CALIFORNIA, }
County of Nevada, Northern District of California, } ss:

George C. Gaylord, being duly sworn, says that he is one of the defendants herein; that the foregoing amended answer is true of his own knowledge, except as to the matters which are therein stated to be alleged upon information and belief, and as to those matters he believes them to be true.

GEO. C. GAYLORD.

91 Subscribed and sworn to before me this eleventh day of August, 1898.

[SEAL.] F. T. NILON,
Judge of the Superior Court in and for the County of Nevada, State of California.

(Endorsed:) Service of the within by a copy admitted this sixteenth day of August, 1898. —— ——, attorney for plaintiff. Filed August 29, 1898. Southard Hoffman, clerk.

In the United States Circuit Court, Ninth Circuit, Northern District of California.

FREDERICK WILLIAMS, Trustee, Complainant,
vs.
THE GOLD HILL MINING CO. (Corporation) ET AL., Defendants.

Replication to Amended Answer of Defendants Rolfe and Maddrill.

The replication of the above-named plaintiff to the amended answer of the above-named defendants, Rolfe and Maddrill.

92 This replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the amended answer of said defendants, for replication thereunto sayeth that he does and will ever maintain and prove his said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the amended answer of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said amended answer contained material or effectual in the law to be replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly — as in and by his said bill he has already prayed.

THOS. S. FORD,
Solicitor for Plaintiff.

C. WALTER ARTZ, *Of Counsel.*

(Endorsed:) Due service by copy of the within replication admitted August 31, 1898. J. M. Walling, attorney for defendants

Rolfe and Maddrill. Filed September 1, 1898. Southard Hoffman, clerk.

93 In the United States Circuit Court, Ninth Circuit, Northern District of California.

FREDERICK WILLIAMS, Trustee, Complainant,
vs.
THE GOLD HILL MINING CO. (Corporation) ET AL., Defendants.

Replication to Amended Answer of Defendant Gaylord.

The replication of the above-named plaintiff to the amended answer of above-named defendant, Gaylord.

This replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies, of the amended answer of said defendants, for replication thereto sayeth that he does and will ever maintain and prove his said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the amended answer of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by the replicant; without that, that any other matter or thing in the said amended answer contained material or effectual in the law to be replied unto, confessed, or avoided, traversed or denied is true; all which matters and things this replicant is ready to
94 aver, maintain, and prove, as this honorable court shall direct, and humbly — in as in and by his said bill he has already prayed.

THOS. S. FORD,
Solicitor for Plaintiff.

C. WALTER ARTZ, *Of Counsel.*

(Endorsed:) Due service by copy of the within replication admitted August 31, 1898. J. M. Walling, attorney for defendant Gaylord. Filed September 1, 1898. Southard Hoffman, clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

FREDERICK WILLIAMS, Trustee, etc., Complainant,
vs.
THE GOLD HILL MINING CO. (a Corporation) ET AL., Respondents.

Enrollment.

The complainant filed his bill of complaint herein on the twenty-third day of November, 1897, which is hereto annexed
95 A subpœna to appear and answer in said cause was thereupon issued, returnable on the third day of January, A. D. 1898, which is hereto annexed.

On the twenty-sixth day of November, 1897, an amendment to the complaint was filed herein, which is hereto annexed.

On said twenty-sixth day of November, 1897, a subpœna was issued directing the respondents named in the amendment to the bill to appear herein on third of January, 1898, and is hereto annexed.

On the third day of January, 1898, the respondents Gaylord, Maddrill, and Rolfe appeared herein by J. M. Walling, Esq., their solicitor.

On the eighteenth day of January, 1898, an order for default was filed herein and is hereto annexed, and a rule was entered taking the bill *pro confesso* against defendant- Martin Bros. & Muir, a copy of which rule is hereto annexed.

On the fourth day of February, 1898, the joint and several plea of the defendants Gaylord, Maddrill and Rolfe, the answer of the defendants Maddrill and Rolfe, and the answer of defendant Gaylord were filed herein and are hereto annexed. On the seventh day of February, 1898, replications to the answer of Maddrill and Rolfe and the answer of Gaylord were filed herein and are hereto annexed. On the ninth day of February, 1898, affidavit of service of replication was filed herein and is hereto annexed.

On the fifth day of July, 1898, an order overruling plea of defendants Gaylord, Maddrill, and Rolfe was made and entered herein,
a copy of which order is hereto annexed.

96 On the twenty-second day of August, 1898, a motion for leave to file amended answer was filed herein and is hereto annexed.

On the twenty-ninth day of August, 1898, an order was made and entered herein granting said motion, a copy of which order is hereto annexed.

On the twenty-ninth day of August, 1898, amended answer- of the defendants Maddrill, Rolfe, and Gaylord, were filed herein and are hereto annexed.

On the first day of September, 1898, replication- to said amended answers were filed herein and are hereto annexed.

Thereafter, after hearing and consideration of said cause, a final decree was signed, filed, and entered in the words and figures following, to wit:

97 At a stated term, to wit, the July term, A. D. 1899, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room in the city and county of San Francisco, on Tuesday, the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable William W. Morrow, circuit judge.

FREDERICK WILLIAMS, Trustee, Complainant,
vs.
THE GOLD HILL MINING COMPANY (a Corporation), George C. Gaylord, Charles E. Maddrill, and Dwight T. Rolfe, Respondents. } No. 12531.

Decree.

This cause came on to be heard at the November, 1898, term of this court and was argued by counsel for the respective parties and submitted to the court for consideration and decision; and the court, after full consideration thereof, having filed its opinion and ordered that a decree be entered herein in accordance therewith:

Whereupon, on consideration thereof, it is ordered, adjudged and decreed that complainant's bill of complaint herein be
98 and the same hereby is dismissed and that the respondents, George C. Gaylord, Charles E. Maddrill and Dwight T. Rolfe, recover from complainant their costs herein expended taxed at forty-four dollars and seventy cents.

WM. W. MORROW,
Circuit Judge.

(Endorsed:) Filed and entered September 26, 1899. Southard Hoffman, clerk.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, Northern District of California.

FREDERICK WILLIAMS, Trustee, Plaintiff,
vs.
THE GOLD HILL MINING COMPANY (a Corporation), GEORGE C. Gaylord, Charles E. Maddrill, and Dwight T. Rolfe, Defendants.

Defendants' Memorandum of Costs and Disbursements.

Marshal's fees	$
Clerk's fees	24.70
Reporter's fees	
Docket fee	20.00
Witness fees	
Total	$44.70

99 Sept. 3, 1899, no appearance for plaintiff. Mr. Gregory for defendant. Cost taxed at $44.70.

SOUTHARD HOFFMAN, *Clerk.*

UNITED STATES OF AMERICA,
Northern District of California, City and County of San Francisco, } *ss:*

J. M. Walling, being duly sworn, deposes and says: That he is the attorney for the defendants Gaylord, Maddrill and Rolfe, in the above-entitled cause, and, as such, is better informed relative to the above costs and disbursements, than the said defendants; that the items in the above memorandum contained are correct, to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

J. M. WALLING.

Subscribed and sworn to before me this twenty-seventh day of September, A. D. 1899.

[SEAL.] ALFRED D. MASON,
Notary Public in and for the County of Nevada, State of California.

To Thos. S. Ford, attorney for plaintiff:

You will please take notice that on Saturday, the thirtieth day of September, A. D. 1899, at the hour of 10 o'clock, a. m., defendants will apply to the clerk of said court to have the within memo-
100 randum of costs and disbursements taxed, pursuant to the rule of said court in such case made and provided.

J. M. WALLING,
Attorney for Gaylord, Maddrill, and Rolfe.

Service of within memorandum of costs and disbursements, and receipt of a copy thereof, acknowledged this twenty-seventh day of September, A. D. 1899.

THOS. S. FORD,
For Plaintiff.

(Endorsed:) Filed this twenty-ninth day of September, A. D. 1899. Southard Hoffman, clerk.

Certificate to Enrolled Papers.

Whereupon, said pleadings, subpœnas, certified copies of orders, copy entry of default and final decree and a memorandum of taxed costs are hereto annexed, said final decree being duly signed, filed and enrolled, pursuant to the practice of said circuit court.

Attest, etc.

[Seal of Court.]

SOUTHARD HOFFMAN, *Clerk,*
By W. B. BEAIZLEY, *Deputy Clerk.*

(Endorsed:) Enrolled papers. Filed Sept. 26, 1899. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

101 In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California. In Equity.

FREDERICK WILLIAMS, Trustee, Plaintiff,
vs.
THE GOLD HILL MINING COMPANY, GEORGE C. GAYLORD, Charles E. Maddrill, and Dwight T. Rolfe, Defendants. } No. 12531.

Opinion on Plea.

MORROW, *Circuit Judge:*

This is a suit in equity by Frederick Williams, as trustee, to foreclose a mortgage executed by the defendant, The Gold Hill Mining Company, on July 1, 1890, to secure the payment of certain bonds, amounting to the sum of fifty thousand dollars, and payable within five years. The plaintiff is a citizen and resident of the State of New York. The defendant, The Gold Hill Mining Company, is a corporation organized and incorporated under the laws of the State of West Virginia. The other defendants are citizens of the State of California. The property mortgaged consists of mines and mining ground, quartz mills, hoisting works and machinery, iron
102 pipe, cuts, tunnels, rights of way, privileges, easements, and improvements belonging to and connected therewith.

It is provided by section 1 of the act of the legislature of the State of California, approved April 23, 1880, entitled "An act for the further protection of stockholders in mining companies," that "It shall not be lawful for the directors of any mining corporation to sell, lease, mortgage, or otherwise dispose of the whole or any part of the mining ground owned or held by such corporation, nor to purchase or obtain, in any way, any additional mining ground, unless such acts be ratified by the holders of at least two-thirds of the capital stock of the corporation. Such ratification may be made either in writing, signed and acknowledged by such stockholders, or by resolutions duly passed at stockholders' meeting called for that purpose."

The defendants, Gaylord, Maddrill and Rolfe, have filed a plea, alleging "that the mortgage or trust deed set out in said bill of complaint and alleged to have been executed by said corporation was not ratified by the holders of at least two-thirds of the capital stock of said corporation, either in writing, signed and acknowledged by such stockholders, or by resolution duly passed at a stockholders' meeting called for that purpose."

These defendants have also filed their answers, in which they admit that the corporation defendant was empowered to execute and deliver the mortgage or trust deed mentioned in said bill of complaint, provided the execution and delivery of said mortgage or trust deed was ratified by the holders of at least two-thirds of the capital stock of said corporation, such ratification having
103 been made either in writing, signed and acknowledged by such stockholders or by resolution duly passed at a stock-

holders' meeting called for that purpose, and not otherwise, but defendants deny, among other things, that such ratification was had; deny that the mortgage or trust deed was signed or otherwise executed, by the president and secretary of the corporation at the date it purports to have been signed and executed; deny that the same was executed by any person whatsoever authorized to do so, or that the same was ratified by holders of two-thirds of the capital stock of said corporation.

The answers of the defendants distinctly set up the defense that the corporation defendant mortgaged the mining ground in controversy without the ratification of the holders of at least two-thirds of the capital stock of such corporation. This defense in the answer covers the plea in bar. The plea must therefore, be overruled.

Grant *v.* Phenix Ins. Co., 121 U. S., 105, 115.

An order in accordance with this opinion will accordingly be entered.

(Endorsed:) Filed July 5, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

104 In the United States Circuit Court, Ninth Circuit, Northern District of California.

FREDERICK WILLIAMS, Complainant, *vs.* THE GOLD HILL MINING COMPANY, GEORGE C. Gaylord, Charles E. Maddrill, and Dwight T. Rolfe, Respondents.	No. 12531. Monday, Aug. 28, 1899.

Opinion on Final Hearing.

Thomas S. Ford, C. Walter Artz, and E. J. McCutcheon, attorneys for complainant; J. M. Walling, attorney for respondents.

MORROW, *Circuit Judge:*

This is an action to foreclose a mortgage upon certain mining property, situated in Nevada county in this State. The mortgage was executed by the Gold Hill Mining Company on July 1, 1890, and conveyed the property mortgaged to G. Livingstone Morse, of the city of New York, as trustee, to secure the payment of one hundred bonds of five hundred dollars each, making fifty thousand dollars in all, payable at five years from date, with interest payable semi-annually, at the rate of ten per cent. per annum. The respondents, George C. Gaylord, Charles E. Maddrell, and Dwight T. Rolfe, are judgment creditors of the respondent corporation.

105 It is alleged in the bill that a default has been made by the respondent, The Gold Hill Mining Company in the payment of the principal and interest of the bonds, and thereby default has occurred in the performance of the conditions of the mortgage. It is alleged that the persons or parties other than said mining company named as respondents in the bill of complaint, have or claim to have

some interest in or lien upon the premises covered by the mortgage, which interest or lien, if any accrued subsequently to the lien of said mortgage, and is subject and subordinate thereto.

The respondent, The Gold Hill Mining Company, has been served with a subpœna, and has defaulted. The respondents, Gaylord, Maddrill, and Rolfe, have appeared and answered the bill. The respondent, Gaylord, denies that The Gold Hill Mining Company was authorized to issue the bonds or to execute the mortgage; alleging that at the date of said mortgage and bonds respondent corporation had its principal place of business in the city of New York, and that said bonds and mortgage are payable in State of New York; that, according to the by-laws of said corporation, no person was, on July 1, 1890, eligible for election as a director thereof, unless he was a *bona fide* owner of one hundred shares of capital stock in the company at the time of his election; alleges that none of the parties acting as directors at the date of the mortgage and bonds were the owners of such shares; that, by the provisions of Code, chapter 53, section 49, of the Laws of West Virginia, a director of a corporation must be a stockholder in the corporation; denies that the said corpora-
106 tion had any board of directors at the date of the adoption of the resolution authorizing the execution of the mortgage and bonds mentioned in the bill; that there were any stockholders, or any directors of said corporation, or any persons authorized to vote for directors, or persons authorized to represent said corporation at the date of the alleged authorization of the said bonds and mortgage; alleges that the said corporation was not indebted at the date of said mortgage and bonds, but that the mortgage and bonds were attempted to be authorized and executed solely for the benefit of persons who pretended to represent said corporation as stockholders and directors; that no consideration had been received by said corporation from any of the persons in whose interests said mortgage and bonds were issued; that the execution and delivery of said mortgage and bonds were authorized, if at all, only by the votes of pretended stockholders of said corporation, each of whom was directly, personally, and financially interested therein, and received the full benefit thereof, and, hence, said mortgage and bonds are fraudulent and void; alleges that the respondent corporation is organized for working the mining claims described in the bill; that the mortgage or trust deed set out in the bill and alleged to have been executed by said corporation was not ratified by the holders of at least two-thirds of the capital stock of said corporation, as required by an act of the legislature of the State of California, approved April 23, 1880, entitled "An act for the further protection of stockholders in mining companies;" alleges that M. J. Shoecraft and C. Littlefield, whose names appear signed to the mortgage or trust deed, were not, respectively, president and secretary of the
107 said corporation at the time of the execution of said mortgage; denies that said mortgage was executed by the president and secretary of said corporation, or either of them, and that the premises described in the bill were conveyed to G.

Livingston Morse, trustee of the plaintiff, and that, by virtue of said mortgage, any lien was created upon said mining claim and premises in favor of said G. Livingston Morse; that said mortgage was authorized, made, executed or delivered in conformity with law; denies that said one hundred bonds have been disposed of to *bona fide* holders for value; that respondent mining company is indebted in the sum of two thousand five hundred dollars, semi-annual interest, on account of said bonds for each or any half year since July 1, 1893, or prior thereto; that on July 1, 1895, the sum of fifty thousand dollars, principal, or said principal sum and interest thereon, became due and payable; that respondent's claim has arisen subsequently to the lien of said mortgage, and is subject thereto; alleges that respondent, Gaylord, recorded in the superior court of the county of Nevada, State of California, a judgment for the sum of twelve thousand four hundred and thirty-nine dollars and twenty-six cents, together with eight dollars costs, which judgment has not been appealed from, modified, vacated, or set aside, but still remains in full force; that subsequent to the entry of the above judgment said respondent caused an execution to issue, and that said mining claims were sold by the sheriff on October 30, 1897; that at this sale respondent Gaylord, being the highest bidder, became the purchaser thereof, for the sum of thirteen
108 thousand three hundred and thirty-one dollars and eighty-two cents, whereupon the sheriff issued a certificate of sale to said respondent, which he now holds, no redemption having been made; that on October 29, 1897, in the superior court of the county of Nevada, State of California, respondent recovered a second judgment against said Gold Hill Mining Company, for the sum of four thousand five hundred and four dollars and eighty-seven cents, and six dollars and seventy-five cents, costs, which judgment constitutes a lien upon the mining claim described in the bill, but which is wholly unsatisfied, since respondent is the owner and holder of said claims; denies that said mortgage was given to secure the purchase price of the property; alleges that the property had been purchased and paid for before the execution of said mortgage or bonds; denies that any considerable portion of the money was used and appropriated as working capital to start said mine.

Respondent asks for a decree that complainant have no lien upon the premises described in the bill; that respondent's claims of lien are paramount to those of complainant; that the amount due and to become due on account of said bonds and interest be determined, and that respondent have such further relief as is agreeable to equity.

Respondents Maddrill and Rolfe have filed a joint answer in which the same allegations and denials are made as in the answer of Gaylord, except that said respondents allege that a judgment was recovered in the superior court of the county of Nevada, State of California, by Charles Maddrill, against said Gold Hill Mining Company, for the sum of six hundred and three dollars and
109 fifty-five cents, and costs amounting to five dollars and ninety cents; that upon an order of sale the property described in

the bill was sold by the sheriff to satisfy said judgment, and at said sale respondents became the purchasers of the property for the sum of six hundred and seventy-five dollars and twenty-five cents, whereupon the sheriff issued to them a certificate of sale, and respondents are now the owners and holders of said certificate of sale, no redemption having been made. The prayer of these respondents is identical with that of the respondent Gaylord.

The Gold Hill Mining Company is a corporation organized under the laws of West Virginia, on June 23, 1890, and consequently a corporation foreign to the State of California. The recognition of its existence, therefore, and the enforcement of its contracts in this State depend upon the comity and consent of the State. Corporations chartered by one sovereignty have no authority to exercise their franchises in another, except as the latter shall permit, but by comity they are suffered to do so where it will not contravene any principal of local policy or any general statute. As was said in Runyan *v* Coster's Lessee, 14 Peters, 122, "Every power which a corporation exercises in another State depends for its validity upon the laws of the sovereignty in which it is exercised; and a corporation can make no valid contract without the sanction, express or implied, of such sovereignty."

In the case of Paul *v.* Virginia, 8 Wallace, 168, Justice Field, delivering the opinion of the court, said: "The corporation, being the mere creation of local law, can have no legal existence be-
110 yond the limits of the sovereignty where created. As said by this court in Bank of Augusta *v.* Earle, "It must dwell in the place of its creation, and cannot migrate to another sovereignty.' The recognition of its existence, even, by other States, and the enforcement of its contracts made therein, depend purely upon the comity of those States, a comity which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other States, but depending for such recognition and the enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion."

The constitution of the State of California declares the public policy of this State with regard to foreign corporations in article twelve, section fifteen, as follows: "No corporation organized outside the limits of this State shall be allowed to transact business in this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State."

Respondents deny the validity of the mortgage set up in the bill, as it was not executed in accordance with the provisions of an act of the legislature of the State of California, approved April
111 23, 1880, and entitled "An act for the further protection of stockholders in mining companies," section one of which

reads: "It shall not be lawful for the directors of any mining corporation to sell, lease, mortgage, or otherwise dispose of the whole or any part of the mining ground owned or held by such corporation, nor to purchase or obtain in any way any additional mining ground, unless such act be ratified by the holders of at least two-thirds of the capital stock of such corporation. Such ratification may be made either in writing, signed and acknowledged by such stockholders, or by resolution duly passed at a stockholders' meeting called for that purpose." (Stats. Cal. 1880, p. 131.)

The mortgage in question was not ratified by the stockholders, as provided in the statute quoted.

In the case of McShane *v.* Carter *et al.*, 80 Cal. 310, the supreme court of this State said, with regard to the section above quoted: "We think that the provision of said act goes to the power or authority of the directors. It cannot be construed to relate merely to their personal liability, for no penalty is imposed upon them, and to so construe it would be to practically nullify the act. In our opinion, the directors of mining corporations have no power or authority to convey the mining ground without the consent of the holders of two-thirds of the stock given as prescribed by the act. And it follows without such consent the title does not pass. And if this be so, the question can be raised by any one who connects himself with the title of the corporation which owned the property, as well as by the stockholders thereof."

To the same effect is Pekin Mining Co. *v.* Kennedy, 81 Cal. 112 356.

The terms of the act and the decisions of the supreme court plainly declare the law with regard to the mortgaging of mining property by a corporation in this State under the statutes of 1880.

On April 23, 1880, another statute was approved, entitled "An act amendatory of an act entitled 'An act for the better protection of the stockholders in corporations formed under the laws of the State of California, for the purpose of carrying on and conducting the business of mining,' approved March 30, 1874." (Stats. Cal. 1880, p. 134.) Section one of this statute reads:

"SECTION 1. It shall be the duty of the secretary of every corporation formed under the laws of this State for the purpose of mining to keep a complete set of books," etc. Then follow certain provisions regarding the balance-sheet, the duty of the superintendent, etc.

In the case of Miles *v.* Woodward, 115 Cal. 308, plaintiff contended that the act above referred to was unconstitutional, because it allowed corporations organized beyond the State limits to transact business within the State upon more favorable conditions than similar corporations organized under the laws of this State. The supreme court, through Justice Henshaw, said: "It is first contended that the act in question is unconstitutional, for the reason that it operates only upon domestic corporations, and thereby allows foreign corporations to transact business within this State upon more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State, in violation

of article twelve, section fifteen of the constitution. But the act, as its title declares, is an act designed for the 'better protec-
113 tion of the stockholders in corporations formed under the laws of the State of California for the purpose of carrying on and conducting the business of mining.' The statute is in its nature both penal and remedial. It is directed to the internal affairs of the corporation, and not to its outside dealings or to the conduct of its business. The constitution was not designed to limit the powers of the legislature, when dealing with the organization and government of corporations which are created by its own will and act. Over such corporations it has and may exercise full power of control. Over the organization and internal government of foreign corporations it has no such powers. The laws of the State do not have extraterritorial force. It would be meaningless for this State to try to legislate upon the internal affairs of such foreign corporations, and it has not attempted to do so. The law is designed to protect stockholders of domestic corporations and to that end has declared that the directors of those corporations, the conduct of whose internal affairs is subject to the control of the legislature, shall do specific acts under a prescribed penalty for their failure and refusal. It does not, therefore, relate to the business of the corporation, nor impose burdens or restrictions upon domestic corporations in the conduct of their business, from which foreign corporations are relieved, but pertains as exclusively to corporate management as do the code provisions relating to the organization and conduct of savings and loan corporations, and all corporations whose internal affairs are more or less carefully regulated by the laws of the State."

114 Complainant contends that the act, Stats. Cal. 1880, p. 134, and the act, Stats. Cal. 1880, p. 131, constitute but one statute, relating only to domestic corporations, and that consequently a foreign corporation such as the respondent corporation is not bound by it. But an examination of the statutes in question by no means supports complainant's position. In the first place, the titles show very clearly the scope of the two acts, which were both passed upon the same day. The title of the acts, Stats. Cal. 1880, p. 131, is "An act for the further protection of stockholders in mining companies;" that of the act, Stats. Cal. 1880, p. 134, is "An act amendatory of an act entitled 'An act for the better protection of stockholders and corporations formed under the law of the State of California, for the purpose of carrying on and conducting the business of mining,' approved March 30, 1874." The general terms, of the first of these titles, as contrasted with the specific declarations comprised in the second, must be apparent at first sight. The one is an act for the protection of stockholders in mining corporations, the other amends an act for the better protection of stockholders in mining corporations formed under the laws of California. A comparison of the text of these two statutes goes still further to show the distinctive feature which mark them as separate statutes dealing with different subjects. The act, Stats. Cal. 1880, p. 131, explicitly enjoins as quoted above that the directors of a mining corporation shall not

sell, lease, mortgage, or otherwise dispose of mining ground without the ratification of two-thirds of the stockholders, which ratification must be evidenced by writing or by a resolution of a meeting of stockholders called for that
115 purpose. It prescribes further that the stock shall be in the name of the real owner or trustee, and directs when the books are to be closed and how the stock is to be voted. The act, Stats. Cal. 1880, p. 134, lays down explicit directions for the keeping of books, the making of a balance-sheet, the duty of the superintendent, and the examination of grounds, and imposes certain penalties. The act of which this act is an amendment (Stats. Cal. 1874, 866) deals precisely with these same matters, and refers evidently and exclusively to domestic corporations. A comparison of the two statutes passed on April 23, 1880, leads, therefore, to the following conclusions: The first act (Stats. Cal. 1880, p. 131) applies to all mining corporations doing business in this State, and regulates the actions of such corporations in selling, leasing, mortgaging, or otherwise disposing of mining ground owned by corporations in this State. The second act (Stats. Cal. 1880, p. 134) applies only to domestic corporations in the conduct of their internal affairs. The former is a general law, affecting all mining corporations transacting business in this State, foreign corporations equally with domestic, and is in pursuance of the requirements of the constitution of the State expressly providing that foreign corporations shall not transact their business at an advantage over domestic corporations.

Against this construction of the first statute the complainant contends that all the powers possessed by the mining company as a corporation, and all its relations with its stockholders, depend upon the sovereignty creating the corporation, and that this sovereignty alone has visitatorial powers. Thus, while the State of Cali-
116 fornia has full power to regulate the form of instruments creating a lien, it has no power to dictate in what manner corporate action shall be evidenced, or to interfere with the internal management of a foreign corporation in any way. Since there is no express provision that foreign corporations must take certain prescribed corporate action, it cannot be assumed that the legislature intended any such action be taken.

In support of this contention counsel cite Saltmarsh *v.* Spaulding, 147 Mass. 224. In this case a mortgage deed had been made by a foreign corporation organized in New Hampshire of land in Massachusetts. This corporation was authorized under the laws of New Hampshire to make contracts to purchase and convey necessary real estate, and to adopt by-laws regulating the powers and duties of its officers. The Massachusetts statute required that a vote of stockholders was necessary to a conveyance of real estate by a corporation. (Pub. Stats. Mass., c. 106, par. 23.) The court held that this statute did not apply to foreign corporations, and Devens, J., in the course of his opinion, said: "While the general principle undoubtedly is that the law of the place where real property is situated exclusively governs as to the title of parties therein, the disposition and mode of transfer thereof and the solemnity attending such

transfers, and while we do not doubt that it would be possible to provide by legislation that foreign corporations permitted to own real property situate in this State should only transfer the same by authority of its stockholders, no such provision has been made. (Attorney General *v.* Mining Co., 99 Mass. 148.) While they
117 must comply in their forms of conveyance with those here required, they derive their authority to make them from the rules imposed upon them by the States where they are created."

In this State, however, the procedure necessary to the validity of a mortgage made by a mining corporation has been expressly declared by statute, and the intention of the legislature that such procedure should be incumbent upon all mining corporations doing business in this State, is further evidenced by the fact that another statute upon another subject was passed upon the same day referring specifically to domestic corporations.

In the case of Vanderpoel *v.* Gorman, 140 N. Y. 563, cited by complainant's counsel, it was held that an assignment for the benefit of creditors made by an insolvent foreign corporation valid under the law of its domicile, will be recognized as valid in New York, and that the statute of New York (section 48, c. 564, Laws of 1890) prohibiting an assignment by a corporation in contemplation of insolvency, does not apply to foreign corporations. Counsel quote a portion of the opinion of Peckham, J., on this case. The learned judge discusses at length the reason why foreign and domestic corporations do not necessarily stand upon the same footing in the matter of assignments, but running through his opinion are expressions such as the following: "As the prohibition is not contained in any statute of the State, we are unable to discover any public policy of the State which would stand in lieu of a positive statute and prohibit our recognition of the validity of this transfer."

And again: "It is thus seen that there are differences of a
118 marked character between a domestic and foreign corporation in relation to this subject. The differences are so marked that the statute regarding domestic corporations can furnish no proof as to the existence of a public policy which in the case of foreign corporations should stand in the place of and be equivalent to that statute." The constitution of this State, however, does furnish precisely such proof of the existence of a public policy as the learned judge declares himself unable to discover in the statutes of New York applicable to the case under his consideration. And that public policy is declared to be that in this State there shall be no discrimination in favor of a foreign corporation.

In the case of Demarest *v.* Flack, 128 N. Y. 205, cited by complainant, Peckham, J., dealt with the question as to whether the defendant in that action was entitled to recognition as a corporation in the State of New York. Defendant had incorporated under the laws of West Virginia. The corporators were citizens of New York, and they had formed a corporation for the sole purpose of doing business in the State of New York, and it was contended by complainant that therefore and on that account they were not en-

titled to be recognized as forming a valid corporation in the State of New York. This contention was disallowed.

But this is by no means the question here. If the corporation under consideration has been duly organized according to the laws of West Virginia, it will be recognized as a valid corporation in this State. But the point under discussion is that the respondent corporation—admitting that it is a duly organized foreign
119 corporation—in the matter of executing a valid mortgage of mining property, is governed and controlled by the law laid down by the statutes of the State of California for the mortgaging of such mining property by a corporation. In the course of this opinion occur the following, with regard to foreign corporations: "When they come to our State to do business, they must conform to our laws relating to foreign corporations, and comply with the terms laid down by us as conditions of allowing them to transact business here." And again: "The supervision of a foreign corporation by this State may easily be exercised by imposing terms as a condition of permitting it to do business here."

Another case cited by complainant, in the same connection, is American Water Works Co. of Illinois *et al. v.* Farmers' Loan & Trust Co., 73 Fed. 956. This was an appeal from the circuit court of the United States for the district of Nebraska. The suit out of which the appeal arose was brought by The Farmers' Loan & Trust Co., the appellee, to foreclose an original and supplemental mortgage on certain water works situated in the city of Omaha, Nebraska, which were given to secure the payment of an issue of negotiable bonds to the amount of four millions of dollars that were executed by the American Water Works Co., a corporation of the State of Illinois. Thayer, J., in delivering the opinion of the court, said: "The powers thus conferred on the Illinois company by the laws of Illinois, it carried with it into the State of Nebraska, and was privileged to there exercise, unless it was prohibited so doing by the provisions of some local law or the public policy of that State. Cowell *v.* Springs Co., 100 U. S. 55, 59; Female Academy *v.* Sul-
120 livan, 116 Ill. 375. And no law of the State of Nebraska has been cited which in our judgment deprived the Illinois company of its right to exercise within the State of Nebraska its charter power to mortgage real estate by it owned and there situated."

In the present controversy, however, there is no question of the right of the respondent corporation to mortgage the mining property. The only question is, Did the corporation comply with the requirements of the State laws regarding the procedure to be adopted by corporations in the mortgaging of mining property?

The personnel and the internal management of foreign corporations are subject to the laws of the State under which they are organized, and by virtue of which they are entitled to exist as corporations. But when such foreign corporations come to do business in the State of California, they are restrained by the public policy of the State from the enjoyment of privileges not participated in by the domestic corporations organized under and existing by virtue of the laws of this State. What are the formalities which attend the con-

veyance or the mortgaging of property by a mining corporation in this State under the act of 1880? They are detailed in the first section of that act, as it has been quoted above. The act of selling, leasing, mortgaging, or any other of the acts therein enumerated, must "be ratified by the holders of at least two-thirds of the capital stock of such corporation. Such ratification may be made either in writing, signed and acknowledged by such stockholders, or by resolution duly passed at a stockholders' meeting called for that
121 purpose." Here the law distinctly lays down the mode of procedure to be followed by mining corporations. No exceptions are made, and the public policy of State is plainly declared to be that foreign corporations shall enjoy no superiority over domestic, under the State laws.

In Morawetz on Private Corporations, vol. 2, section 965, we find: "It is not necessary in all cases that a State should by statute expressly exclude foreign corporations in order to indicate that they shall not be allowed to act within its jurisdiction; the will of the State may be implied from its general policy and legislation. Chief Justice Taney said: 'Whenever a State sufficiently indicates that contracts which derive their validity from its comity are repugnant to its policy, or are considered injurious to its interests, the presumption in favor of its adoption can no longer be made.' (Bank of Augusta *v.* Earle, 13 Pet. 592.) Accordingly, it has been held that foreign corporations have no right, by the law of comity, to do acts within a State which are prohibited by the laws of that State to its own citizens, or corporations engaged in a similar business."

In the case of Falls *v.* United States etc. Banking Co., 97 Ala. 417, the court said: "When a corporation of foreign creation not only attempts to enforce rights before our tribunals, but goes farther, and actually performs corporate acts within our jurisdiction, it can claim no exceptional rights or privileges which may have been conferred by the law of its creation, if such enforcement involves a breach of our own public policy or statutory system. The legislature of one State cannot confer rights and authorize their
122 exercise beyond its own boundaries, unless they be in harmony with the general policy of the State of country in which their exercise is attempted."

In Myers Mining Co. *v.* Wetzel *et al.*, Court of Chancery Appeals of Tennessee, Feb. 8, 1896, 35 S. W. 896, the Southern Mutual Building & Loan Association, a foreign corporation, held three mortgages or trust deeds which had been executed to it in Tennessee, and under which the trustee proposed to sell certain property. The bill asked for an injunction to prevent the trustee from selling the property in question, and that the trust deeds and the contracts thereunder be declared illegal and void, on the ground of noncompliance with statutory requirements regarding building and loan associations. One ground of demurrer to the bill claims that "a contract made by a foreign corporation before it has complied with statutory prerequisites, is not void, because the act does not expressly so declare." This ground of demurrer was disallowed.

In the case of Christian Union *v.* Yount, 101 U. S. 352, Justice

Harlan says: "For, besides the admitted incapacity of a corporation of one State to exercise its powers in another State, except with the assent or permission, express or implied, of the latter, it is a principle 'as inviolable as it is fundamental and conservative, that the right to hold land and the mode of acquiring title to land must depend altogether on the local law of the territorial sovereign,'" in connection with which are cited Runyan *v.* The Lessee of Coster, 14 Pet. 122, and Lathrop *v.* Bank of Scioto, 8 Dana (Ky.) 114. See, also, U. S. Mortgage Co. *v.* Gross, 93 Ill. 433, 493; People *v.* Howard, 50 Mich. 239.

123 From a consideration of the law and the various authorities, it appears that the right of a foreign corporation to engage in business in another State depends upon the comity of that State, and that this comity again is limited by the public policy of the State, which public policy may be inferred from the general attitude of the State with regard to such corporations, or may be positively declared by statutory enactment. In the case in question, the State has declared its public policy in the State constitution, and has prescribed by statute a certain mode of procedure to be followed by all mining corporations in the mortgaging of mining lands. It was the duty of the foreign corporation to comply with those requirements. It came into this State to do business; it should have done its business in accordance with the law of this State.

Complainant maintains that respondents, as judgment creditors, cannot question the authority of the corporate action authorizing the execution of the mortgage and the issue of the bonds, to which respondents reply that they do not question the issue of the bonds, but the lien of the mortgage, which lien, they maintain, is of no value for non-compliance with statutory requirements.

It was held in the case of McShane *v.* Carter, 80 Cal. 310, cited above, that the "question (of title) can be raised by any one who connects himself with the title of the corporation which owned the property, as well as by the stockholders thereof." See, also, Pekin Mining etc. Co. *v.* Kennedy, 81 Cal. 356, *supra*.

124 Complainant endeavors to meet these decisions of the supreme court of this State with the claim that the ruling of the State court in the above cases must be disregarded by the Federal court, on the grounds that this particular point does not involve the construction of a statute, but is a question of commercial law; and, such being the case, the court must follow the independent rulings of other Federal tribunals.

What is commercial law? In the case of Railroad Co. *v.* National Bank, 102 U. S. 14, 31, the Supreme Court said, "It is a law not peculiar to one State or dependent upon local authority, but one arising out of the usages of the commercial world." Mr. Justice Clifford, in a concurring opinion, on page 55, refers to Bouvier's definition of commercial law, as follows: "Commercial law is a phrase employed to denote the branch of the law which relates to the rights of property and the relations of persons engaged in commerce. Persons engaged in commercial adventures, wherever they may have their domicile, have business relations throughout the civilized world

from which it results that commercial law is less local and more international than any other system of law, except the law of nations."

It appears to be clear that the parties to this action cannot be described as persons engaged in commercial adventures, in the sense in which that term is ordinarily employed.

In the case of Swift *v.* Tyson, 16 Pet. 1, Story, J., in delivering the opinion of the court, said, referring to the thirty-fourth section of the judiciary act, 1789, 1 Stats. at Large, 92: "It never has
125 been supposed by us that the section did apply, or was designed to apply, to questions of a more general nature not at all dependent upon local statutes or local usages of a fixed and permanent operation; as, for example, to the construction of ordinary contracts or other written instruments, and especially to questions of general commercial law where the State tribunals are called upon to perform the like functions as ourselves, that is, to ascertain, upon general reasoning and legal analogies, what is the true exposition of the contract or instrument, or what is the just rule furnished by the principles of commercial law to govern the case. And we have not now the slightest difficulty in holding that this section upon its true intendment and construction is strictly limited to local statutes and local usages of the character before stated, and does not extend to contracts and other instruments of a commercial nature the true interpretation and effect whereof are to be sought, not in the decisions of the local tribunals, but in the general principles and doctrines of commercial jurisprudence. * * * The law respecting negotiable instruments may be truly declared, in the language of Cicero, adopted by Lord Mansfield in Luke *v.* Lyde, 2 Bart. R., 882, 887, to be in a great measure not the law of a single country, but of the commercial world: '*Non erit alia lex Romæ alia Athenis, alia nunc, alia post hac sed et apud, gentis, et omni tempore, una eademque lex obtinebit.*'"

It is evident that even with this liberal definition of commercial law, complainant's argument in this regard cannot prevail. There is, on the contrary, every reason to consider this as a case in which the decisions of the State court carry the weight of authority.
126 In cases which depend upon the statutes of a State, and particularly in such cases as relate to the title to land, the United States Supreme Court will adopt the construction of the State courts whenever it is possible to ascertain this construction. Polk's Lessee *v.* Wendal *et al.*, 9 Cranch., 87.

In Gardner *v.* Collins, 2 Pet., 58, the case depends upon the construction of the statute of descent of Rhode Island of 1822. The court said: "If this question had been settled by any judicial decision in the States where the land lies, we should, upon the uniform principles adopted by this court, recognize that decision as a part of the local law."

See also Elmendorf *v.* Taylor, 10 Wheat. 152.

Again, in the case of Shelby *et al. v.* Guy, 11 Wheat., 361, the court held: "That the statute law of the States must furnish a rule of decision to this court as far as they comport with the Constitution of the United States in all cases arising within the respective States, is

a position that no one doubts. Nor is it questionable that a fixed and received construction of their respective statute laws in their own courts makes, in fact, a part of the statute law of the country, however we may doubt the propriety of that construction."

The decision, then, of the supreme court of this State must for every reason prevail in this case. The construction placed upon the statute in question by the State court becomes statute law, and this court can do nothing but accept it. The decisions in the cases of McShane *v.* Carter and Pekin, etc., Mining Co. *v.* Kennedy, declare that respondents, as judgment creditors, have the right to ques-
127 tion the validity of the mortgage in this case, and there is no merit in the contention of complainant that this right can be denied by this court.

The mortgage being invalid by reason of the non-compliance of the directors of the respondent corporation with the statutory requirements of this State, it will not be necessary to consider the other objections relating to its execution and the organization of the respondent corporation.

A decree will be entered in favor of the respondents, in accordance with this opinion.

(Endorsed:) Filed August 28, 1899. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

In the United States Circuit Court, Ninth Circuit, Northern District of California. In Equity.

FREDERICK WILLIAMS, Trustee, Complainant,
vs.
THE GOLD HILL MINING COMPANY, GEORGE C. GAYLORD, Charles E. Maddrill, and Dwight T. Rolfe, Defendants.

Testimony.

Testimony taken for the complainant in the city of New York
128 at the office of Frederick H. Ridgway, No. 54 Wall street, on the twenty-eighth day of July, 1898, in pursuance of notice duly served upon the solicitor for the defendants.

Appearances: C. Walter Artz, of counsel for the complainant. Andrew J. Perry, of counsel for the defendants, Gaylord, Maddrill and Rolfe.

CALVIN LITTLEFIELD, being first duly sworn, testified as follows:

(By Mr. ARTZ:)

Q. Mr. Littlefield, are you the secretary of the Gold Hill Mining Company?

A. Yes, sir.

Q. How long have you been such secretary?

A. Since the election of permanent officers, July 10th, 1890. Prior to that I had possession of the records.

Q. Have you also been treasurer during that period?
A. Yes, sir.

(Paper shown witness.)

Q. Is that the original mortgage sued upon in this action?
A. It is.
Q. And is that the record marks endorsed thereon?
A. Yes, sir.
Q. Do you know the signatures M. H. Shoecraft and C. Littlefield, subscribed to said mortgage as president and secretary, respectively, are the true signatures of those individuals?
A. They are.

(Mortgage offered in evidence, and mark-d Exhibit "A.")

Q. Mr. Littlefield, do you know whether there was at any
129 time any paper executed by the Gold Hill Mining Company for the purpose of correcting the forms of the mortgage as originally executed?
A. Yes.
Q. How was that paper executed, one or more originals?
A. Duplicate.
Q. Is this one of the duplicates?
A. It is.
Q. Do you know what was done with the other original?
A. Sent to the register at Nevada City.

Mr. ARTZ: I offer this in evidence.
(Marked Exhibit "B.")

Q. How many bonds were issued under the mortgage, Exhibit "A"?
A. One hundred.
Q. Of what denomination?
A. Five hundred dollars each.
Q. Is this one of the bonds (showing paper)?
A. It is.

Mr. ARTZ: I offer in evidence the following form of bond:

UNITED STATES OF AMERICA.

No. —. *State of California.* $500.

The Gold Hill Mining Company.

First-mortgage Ten Per Cent. Gold Bond.

For value received, the Gold Hill Mining Company promises to pay to bearer, or the registered holder hereof, the sum of five hundred dollars in gold coin of the United States of America, at the office of the Gold Hill Mining Company in New York city, New York, on the first day of July, 1895, with interest at the rate of ten

per centum per annum from July 1, 1890, payable semi-
130 annually, at the place aforesaid, in like gold coin, on the first days of January and July in each year, on presentation of the annexed coupons therefor.

This bond is one of a series numbered consecutively from one to one hundred, and amounting in the aggregate to fifty thousand dollars, all of like date, the payment whereof is secured by a first mortgage or deed of trust, bearing date the first day of July, A. D. 1890, duly executed and delivered by the Gold Hill Mining Company and duly recorded, conveying the real and personal property of said company, and all else therein described, in trust, to secure the payment of said bonds and interest.

If default shall be made in the payment of any half-yearly installment of interest on any such bond, the principal thereof may become due and payable as provided in said mortgage or deed of trust.

This bond shall pass by delivery, unless registered on the books of the company, but after registration of ownership duly certified thereon, no transfer except upon the books of the company shall be valid, unless the last transfer shall have been to bearer; and this bond shall continue subject to successive registrations and transfers to bearer at the option of the holder.

The company reserves the right in the mortgage or deed of trust to redeem this bond on any day when interest is payable, either by giving six months' notice, by publication in the "New York Times" once a week for five successive weeks, or by paying interest six months in advance.

This bond shall not become obligatory until the certificate endorsed is signed by the trustee, G. Livingston Morse.

131 In witness whereof, the Gold Hill Mining Company, by resolution of its board of directors, has caused its corporate seal to be hereto affixed and signed by its president, attested by its secretary, and has also caused the coupons hereto annexed to be duly numbered and authenticated by signature of its treasurer, this first day of July, A. D. 1890.

THE GOLD HILL MINING COMPANY,
By —— ——, *President.*

Attest: —— ——, *Secretary.*

$25. (*Form of Coupon.*)

The Gold Hill Mining Company will pay to bearer twenty-five dollars, in gold coin of the United States of America, at the office of the company in New York city, New York, on the first day of ——, 189–, being six months' interest, then due, on its first-mortgage bond, No. —, coupon No. —.

—— ——, *Treasurer.*

Trustee's Certificate.

(Endorsed.)

This bond is one of the series of bonds within mentioned, and also described in a mortgage or deed of trust, bearing date the first
132 day of July, A. D. 1890, and executed by the Gold Hill Mining Company to G. Livingston Morse, trustee.

—— ——, *Trustee.*

Registration.

(Endorsed.)

NOTICE.—No writing in this bond except by an officer of the company.

Date of transfer.	To whom transferred.	Transfer agent.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

Q. Were these bonds issued -or a consideration?
A. They were.
Q. What was the character of the consideration in general—whether money or anything else or both?
A. Money paid for property; paid for development, and expenses.
Q. Were certain of the bonds issued to take up overdue coupons?
A. There were.
Q. State how many.
A. Seven.
Q. Were all of the bonds of the same denomination?
A. Yes.
Q. How much?
A. Five hundred dollars.
Q. Is Mr. G. Livington Morse, the trustee named in the mortgage, now alive?
A. He is not.
Q. When did he die?
A. January, 1891, I think.
Q. Was any one appointed in his place?
A. Frederick Williams.
133 Q. Have you the minute book of the company in your possession?
A. I have.
Q. Is there any record in it of a meeting by bondholders, as called for in the mortgage?
A. There is.
Q. To elect a trustee in Mr. Morse's stead?
A. Yes, sir.
Q. On what page does that record appear?
A. Page seventeen.

Mr. ARTZ: I offer that in evidence.

The following is a copy of the same:

"MARCH 4, 1891.

Board met.

Present: C. Littlefield, W. W. Tucker, M. J. Shoecraft, and R. H. Pettigrew, Jr.

The president announced the business before the board was the election of a trustee of the mortgage in place of G. Livingston Morse, deceased.

Mr. Tucker was made chairman, and Mr. Pettigrew secretary of the bondholders' meeting. They reported forty-one bonds represented.

Mr. Fred. Williams was nominated for the office of trustee. A ballot was ordered, and Mr. Shoecraft, as teller, reported that Mr. Williams had received forty-one votes; thereupon Mr. Littlefield, as secretary of the board, declared Mr. Williams unanimously elected trustee, vice G. Livingston ——, deceased.

On motion, the board adjourned to 1.30, M'ch 5, '91.

C. LITTLEFIELD,
Secretary G. H. M. Co."

Q. I see by the record you have here that those present were C. Littlefield, W. W. Tucker, M. J. Shoecraft, and R. H.
134 Pettigrew, Jr. Did they represent a majority of the bonds then outstanding?

A. Yes, sir.

Q. Did Mr. Morse ever accept the trust—did he ever qualify?

A. He did.

Q. Had he entered into the performance of his trust for any length of time—if so, how long?

A. From the organization of the company until his death—about seven months.

Q. Mr. Littlefield, was there ever a payment of cash made for the coupons of the bonds secured by the mortgage now sued on, were any of them paid in cash?

A. By the company—no.

Q. When did the first coupon fall due?

A. January 1, 1891.

Q. Was there any request for payment made at that time of the officers of the company?

A. A general one.

Q. Were there any funds to pay it?

A. None.

Q. Payment was refused then?

A. It was.

Q. Can you tell me what coupons were paid by the issue of new bonds?

A. I have the memorandum.

Q. Refresh your recollection from what memorandum you have, and then state what amount of coupons were issued and what coupons they were, if you can.

A. You mean by numbers?

Q. Yes, give me all the details you can about them.

A. Mr. Tucker presented No. 1, 17; No. 2, 17; No. 3, 2; No. 4, 4; total of forty coupons—equal to value of two bonds, and he received two bonds. At a latter date he presented nine of No. 3 and ten of No. 4, and received two bonds, the total being thirty-nine, the
135 interest accruing on overdue coupons exceeding the value of one bond. Mr. Hungerford presented ten of No. 1 and ten of No. 2; received a bond. Later date nine of No. 3 and ten of No. 4; received a bond, and an allowance for interest on coupons. Mr. Williams ten of No. 1, twelve of No. 2, and received a bond; thirteen of No. 3 at a later date, and thirteen of No. 4, and received two bonds. He handed in fifty-nine coupons.

Q. Can you tell me at what date, and under what resolutions these one hundred bonds were issued?

A. I can in detail.

Q. This is the record? (indicating.)

A. Yes. On pages three and four of the minute book is the resolution authorizing the bonds first issued.

Mr. ARTZ: I offer in evidence minutes of a meeting of the board of directors held July 10, 1890, as follows:

"*Minutes of Meeting Held July* 10, 1890."

Board met. Present: Messrs. Littlefield, Morse, Pettigrew, Shoecraft and Tucker. Mr. Morse presiding.

Mr. Shoecraft offered a set of by-laws, which on motion of Littlefield, seconded by Tucker, were referred to Messrs. Morse and Shoecraft, to be reported at a future meeting.

On motion, resolved: To proceed to the election of officers of the board for one year, viz: President, vice-president and secretary and treasurer; also a general manager.

Mr. Morse nominated Mr. M. J. Shoecraft for president. The votes were all cast for M. J. Shoecraft, and he was declared to be elected president for one year.

Mr. Morse nominated Mr. Tucker for vice-president.

136 Mr. Tucker declined, and, in turn, nominated Mr. Morse. The votes were all cast for G. Livingston Morse, and he was declared elected as vice-president for one year.

Mr. Pettigrew nominated C. Littlefield for secretary and treasurer. The votes were all cast for Calvin Littlefield, and he was declared elected secretary and treasurer for one year.

Mr. Morse nominated Byron N. Shoecraft for the position of general manager. Motion seconded by C. Littlefiield and carried.

On motion of Mr. Tucker, seconded by Littlefield, B. N. Shoecraft was appointed agent for the company in California, in Nevada City, and W. A. Ohley agent in West Virginia, at Charleston.

On motion of Mr. Morse, seconded by Mr. Pettigrew, resolved: That the directors of this company be authorized and directed to purchase of M. J. Shoecraft the mines formerly known as the Nevada

City Gold Quartz Mining Company, and pay therefor one hundred and sixty thousand shares of the capital stock of this company, being its total issue, and twenty-five thousand ($25,000) dollars in first-mortgage bonds. Motion carried.

On motion adjourned, to meet at the call of the president.

W. W. TUCKER,
Sec'y pro Tem."

Q. How many bonds were issued under that resolution?
A. Fifty.
Q. What consideration was received by the company for them?
A. Purchase of the property.

137 Q. Now, go ahead; what further resolutions were passed authorizing the issue of bonds—the next resolution was when?
A. August 29, 1890.

Mr. ARTZ: I offer in evidence minutes of a meeting held August 29, 1890, appearing on pages 8 to 11 of the minute book, as follows:

"AUGUST 29, 1890.

Minutes of a Special Meeting Held Today.

Present: Messrs. Morse, Shoecraft and Littlefield.

On motion of Mr. Morse, seconded by Littlefield,

Resolved: That the Gold Hill Mining Company procure, by note or otherwise, fifteen hundred ($1,500) dollars, out of which to pay one hundred and eighty-five dollars (or) thereabouts, for printing the bonds, stock book and by-laws of the company, and the amount paid the secretary of state of West Virginia for certified copies of articles of incorporation, and the balance of said fifteen hundred dollars be forwarded at once to the general manager of the mine and property of the company, to be used by him in the management of the company's mines and property.

Resolved: That the fifty (50) bonds of the company, and the five thousand shares of stock now in the hands of G. L. Morse, trustee, be delivered by said trustee to the following persons in the following sums or amounts, viz:

To M. J. Shoecraft, fifteen bonds and fifteen hundred shares of stock.

Calvin Littlefield, ten bonds and one thousand shares of stock.

W. W. Tucker, ten bonds and one thousand shares of stock.

138 Fred. Williams, ten bonds and one thousand shares of stock.

G. L. Morse, five bonds and five hundred shares of stock.

Provided, however, that each person, on receiving said bonds and stock, shall enter into an agreement in writing with the company and with each other, in form and manner approved by the board, that he will raise or furnish for the company and deposit the same with the treasurer of the company the following sums, respectively set opposite their respective names, and of such sums raise and de-

posit five hundred dollars per month till the whole amount be raised and deposited, viz:

M. J. Shoecraft, to furnish and deposit	$6,000
Calvin Littlefield, to furnish and deposit	4,000
W. W. Tucker, to furnish and deposit	4,000
Fred. Williams to furnish and deposit	4,000
G. L. Morse, to furnish and deposit	2,000

That of the money furnished and deposited fifteen hundred be used to pay said note of fifteen hundred dollars, upon which the money was raised as stated in above first resolution, and the balance be used for developing the mines and property of the company, and to pay interest to become due on the mortgage bonds of the company January 1, 1891, in the manner following, viz: 1st. The treasurer to forward to the general manager of the mines as fast as deposited for the next four months all that shall be thus deposited of the five hundred dollars per month; except reserving each month out of said deposit *pro rata* sufficient so that at the end of said four
139 months there shall be enough reserved in the treasury to make two thousand five hundred dollars, to meet and pay the interest which shall be due January 1, 1891, on the mortgage bonds of the company.

2nd. The balance and residue of the moneys thus furnished and deposited with the treasurer of the company, as above stated, is to be used in developing and working the mines and property of the company as the board shall direct; if all or only a part shall be thus needed for the purpose, then so much as shall be thus needed. And in case more than ten thousand dollars be raised and deposited upon the foregoing plan during the next four months by the several parties receiving said bonds and stock from the trustee as hereinbefore stated, and it shall be desirable, or needed, to use more than the sum or amount hereinbefore specified at the mines during the next four months, then such sum or amount thus needed, so far as it can be done, shall be forwarded to the general manager of the mines during the next four months, to be used in working the property.

Resolved: That the form of agreement shall be as follows:

This agreement, made and entered into by the undersigned, this twenty-ninth day of August, 1890, witnesseth: That whereas, by a resolution of the board of directors of the Gold Hill Mining Company, adopted at a regular meeting of the board of directors, on the twenty-ninth day of August, 1890, it was among other things resolved that the fifty bonds and the five thousand shares of the Gold
140 Hill Mining Company's stock now in the hands of G. L. Morse, as trustee, shall be distributed to the undersigned and received by them severally in the following amounts each as follows:

M. J. Shoecraft, to receive fifteen bonds and fifteen hundred shares of stock.

Calvin Littlefield, to receive ten bonds and one thousand shares of stock.

W. W. Tucker, to receive ten bonds and one thousand shares of stock.

Fred. Williams, to receive ten bonds and one thousand shares of stock.

G. L. Morse, to receive five bonds and five hundred shares of stock.

Upon condition that each of said persons thus receiving bonds and stock shall raise and deposit with the treasurer of said company five hundred dollars per month, until each person has paid into the treasurer of said company the following sums or amounts set opposite his name as follows, to wit:

M. J. Shoecraft, to deposit with treasurer	$6,000
Calvin Littlefield, to deposit with treasurer	4,000
W. W. Tucker, to deposit with treasurer	4,000
Fred. Williams, to deposit with treasurer	4,900
G. L. Morse, to deposit with treasurer	2,000

Now, for value received, and in consideration of the premises, having severally received of said trustee the amount and number of bonds and (stock) set opposite our respective names, and for the purpose of also promoting the best interest of said Gold Hill Mining Company, that we will each pay to said company five hun-
141 dred dollars per month in each month consecutively from the date hereof till each of the undersigned shall have paid and deposited with the treasurer of said Gold Hill Mining Company the sums set opposite our respective names as hereinabove designated and expressed:

It being expressly understood that no one of the undersigned is liable, or under any obligation, to pay any sum whatever more than the above sums expressed and set opposite his name, it being a several and not a joint obligation.

In witness whereof we have respectively each set our hand and seal herewith this twenty-ninth day of August, 1890.

Resolution carried.

On motion adjourned to August 30, at 1 p. m.

C. LITTLEFIELD, *Sec'y*,"

Q. How many bonds were issued under that resolution?
A. Twenty.
Q. What was the consideration for payment?
A. Money for the mine, for expenses and for services.
Q. Are all the bonds you have just mentioned now outstanding?
A. They are.
Q. Now pass to the next resolution.
A. March 10, 1891, pages 19 to 24.

Mr. ARTZ: I offer in evidence minutes of a meeting of the board of directors held March 10, 1891, and appearing on pages nineteen to twenty-four of the minute book, as follows:

142 "MARCH 10, 1891.

Board met.

Present: Messrs. Shoecraft, Tucker and Littlefield. Resolutions adopted as follows:

Whereas, in the opinion of said board of directors of the Gold Hill Mining Company, it is expedient that sufficient funds be raised as soon as may be, and sent to the general manager, N. B. Shoecraft, of the mines and property of said company at Nevada City, California, to enable him to more speedily develop the mines and property of said company, therefore: "A" voted:

Resolved, that the Gold Hill Mining Company do raise the sum of ten thousand ($10,000) dollars, and deposit the same in the Fourteenth Street bank, New York, in New York city, and the same be sent to B. N. Shoecraft, the general manager of the mines and property of the company at Nevada City, California, as follows, viz: The sum of three thousand ($3,000) dollars to be sent said general manager in ten days from this date; that on the first day of every month thereafter such sum, or amount, to be sent to him as he shall write or wire on the twenty-fifth day of each month to Calvin Littlefield, secretary and treasurer of said company, at No. 60 Broadway, New York, as he shall need, or require, to pay the bills and expenses of working and developing the mines of the company for such month, and on the first day of each month the said Littlefield, treasurer, shall, after having received such letter or telegram from said general manager, informing him of the amount required by said general manager to pay said bills and expenses,
143 send the same to said general manager in New York drafts or telegrams at Nevada City, California, out of the funds which the said Gold Hill Mining Company shall have deposited in said Fourteenth Street bank aforesaid. And in the same way and manner as above stated in monthly payments, the funds so deposited in said bank by said Gold Hill Mining Company, as aforesaid, are to be sent to said general manager monthly, as above stated, till the whole of said ten thousand ($10,000) dollars shall have been expended in working and developing the mines and property of said company. The secretary of the Gold Hill Mining Company is hereby directed to forward B. N. Shoecraft, general manager, forthwith a certified copy of the foregoing preamble and resolution.

Resolved (B): That in order to raise ten thousand ($10,000) dollars to send general manager, that this company do make notes in the aggregate amounting to said ten thousand dollars, with the privilege of renewing the same one or more times as may be deemed best and desirable; and payable at such place and time, and to be executed by the treasurer of said company by signing the name of said company by him as treasurer to the order of N. J. Shoecraft, C. Littlefield, and W. W. Tucker; that of the notes so made an amount in the aggregate of seven thousand five hundred ($7,500) dollars be delivered to W. W. Tucker to enable him to raise the money thereon to the amount of seven thousand five hundred dollars, and that there be delivered to him at the same time by the treasurer of said company fifteen hundred shares of the treasury stock of said company, to be owned and held by him as a
144 commission-or his promising or raising said seven thousand five hundred dollars on said notes so delivered to him, and that there also be delivered to said Tucker by the treasurer of said

company, eighteen (18) of the first-mortgage bonds of said company as collateral security for the payment of said notes so delivered to him.

And as M. J. Shoecraft has promised to, and does now, deliver to said Tucker fifteen thousand shares of his, said Shoecraft's, own individual stock of said Gold Hill Mining Company, represented by certificates Nos. 29 and 30, as further collateral security to the payment of said notes delivered to said Tucker as aforesaid, the money raised, and to be raised, by said Tucker on said notes to be sent to the said general manager of said company, according to and as stated in resolution "A" above referred. And, when said notes, and all of them, become due and payable and they are by him to be renewed, so as not to work a forfeiture of the collateral before the expiration of one year from the date hereof. If the same be not paid, and the renewals thereof, or any of them, then the said eighteen bonds hereinbefore named, so delivered to said Tucker of the said Gold Hill Mining Company, in case of such non-payment at the end of one year from the date hereof. then said Tucker, or the bank with whom he may have deposited the same, may proceed to sell the same on giving said company proper notice of such time and place of sale, and out of the avails of such sale pay and discharge said notes, or so much thereof as the avails of the said eighteen bonds will thus do. And if the avails of the sale of said eighteen bonds be not sufficient to pay off in full and discharge said notes, then and in that case
145 said Tucker, or the bank with which he may have deposited the same, may in like manner, and upon like notice, proceed to sell, said notice to be given to said Shoecraft, the said fifteen thousand shares of said M. J. Shoecraft's stock, and out of the avails of such sale pay off and discharge said notes, whatever there may be remaining unpaid by sale of eighteen bonds aforesaid. The surplus, if any, arising from said sale after paying said balance of said notes to be paid said Shoecraft, or his heirs or assigns. No more, however, of said fifteen thousand shares of said stock are to be sold than will be necessary to pay and discharge the balance due and unpaid on said notes aforesaid, and the balance of said stock aforesaid unsold is to be delivered to said Shoecraft, his heirs, or assigns. It is, however, further resolved that when said notes or renewals thereof, as above specified, are all duly paid, if so done without sale, then said bonds are to be delivered back to the treasurer of said company for said company, and the said fifteen hundred shares of stock of said Shoecraft are to be delivered to him, or his heirs or assigns or legal representatives. No forfeiture of collaterals, as above stated, shall occur or take place, being protected by said Tucker by timely renewal of said notes, if need be, until one year from the date hereof.

And it is further resolved that of the notes so made by said company to raise said ten thousand dollars there be delivered to M. J. Shoecraft sufficient in amount to make twenty-five — ($2,500) dollars, and there be delivered to him five hundred shares of the treasury stock as a commission to him for raising the money on said notes so delivered to him, and also to be delivered to him, the said
146 Shoecraft, six of the first-mortgage bonds as collateral security for the payment of said notes so delivered to him, the funds

raised by him on said notes and collateral to be used and sent to B. N. Shoecraft, general manager of the mines and property of said company, as stated in resolution "A." And said M. J. Shoecraft is to have in readiness five thousand shares of his own individual stock of said company, to be delivered to said company when required so to do, to meet and pay whatever, if any, there may be due and unpaid on the notes so delivered to him after the sale, if such sale takes place of the six bonds delivered to him to meet and pay said notes delivered to him. The sale in all respects as to time and place of notice of sale to be the same as is hereinbefore stated in reference to the said eighteen bonds delivered to said Tucker and on the payment of said notes such sales to be made. And, if, on said sale of said six bonds, there be not sufficient to pay all and any balance due and unpaid on said notes delivered to said Shoecraft, then the said five thousand shares is to be sold in the same way and manner in all respects as — time, place and notice to said Shoecraft, as stated hereinbefore, in reference to the fifteen thousand shares of his stock delivered to said Tucker, and the surplus, if any arising from said sale, to be delivered to said Shoecraft, his heirs, or assigns. And if said notes are paid, if delivered as hereinabove is provided to said company without sale, the same to be delivered to said Shoecraft, his heirs, or assigns. Said Shoecraft agreeing that none of the notes delivered to him in any renewals thereof shall work a forfeiture of the collaterals before one year from this date, and he agrees to see
147 to it if any renewals be made in or for any of said notes delivered to him, that none of them shall work a forfeiture of said collaterals before one year from the date hereof.

Adjourned.

C. LITTLEFIELD, *Sec'y.*"

Q. What bonds were issued under that resolution?

A. Eighteen.

Q. What were they issued for?

A. Collateral to company's note, to raise money for the mine.

Q. Do you know the amount of the notes to which they were collateral?

A. Originally, I think, six thousand two hundred dollars. I have to refer to memoranda. There were collateral notes seven thousand five hundred dollars.

Q. These notes of the company?

A. Yes, sir.

Q. Has this collateral ever been sold?

A. I have been advised that it has.

Q. Advised by whom?

A. The holder of the collateral.

Q. Pass on to the next resolution.

A. Page 73?

Mr. ARTZ: I offer in evidence minutes of a meeting of the board of directors held on the first day of August, 1895, appearing on page seventy-three of the minute book, as follows:

148 "AUG. 1, 1895.

Board met.

Present: Messrs. Shoecraft, Tucker, Perry, Williams and Littlefield.

Minutes of meeting held March 13, 1894, March 30, 1894, and January 12, 1895, were read and approved.

Voted that the treasurer deliver to W. A. Beach the bond held by him, to protect the endorsers, M. J. Shoecraft and C. Littlefield, on a certain note dated Nov. 29, 1892, for four hundred and thirty-two dollars, with interest, now held by said Beach, upon his releasing said endorsers from all liability by reason of such indorsement.

On motion of Mr. Tucker, seconded by Mr. Perry, resolved: That Byron N. Shoecraft be appointed, and he is hereby appointed agent of the Gold Hill Mining Company at Nevada City, Cal., to receive all moneys paid into the Nevada City bank on the contract of sale and on account of said company, and to transmit the same forthwith to the Fourteenth Street bank of New York city to the account of said company.

Resolved: That, on the receipt of an order or draft signed by M. J. Shoecraft, president, C. Littlefield, secretary, and F. Williams, trustee, jointly, the said B. N. Shoecraft, agent, may retain of the money so deposited at the Nevada City bank the amount named in said order and apply the same in payment of the debts and expenses of said company in California.

Resolved, that all moneys deposited as aforesaid in the Fourteenth Street bank, New York, be drawn only on the draft or order
149 of the president and secretary of said Gold Hill Mining Co., and of the trustee for the bondholders jointly. Resolutions adopted, unanimously.

C. LITTLEFIELD, *Sec'y.*"

Q. Has that collateral been sold out?
A. Not to my knowledge.
Q. How much interest is due on it?
A. From November 29, 1892, to date.
Q. At what rate?
A. Six per cent.
Q. Pass to the next resolution, where is it?
A. Page 82.

Mr. ARTZ: I offer in evidence minutes of a meeting of the board held November 14, 1895, and appearing on page 82 of the minute book, as follows:

"Nov. 14, 1895.

Present at meeting of the board: A. J. Perry, W. W. Tucker, and C. Littlefield.

Mr. Tucker, vice-president, in the chair.

The minutes of the meetings held Aug. 1, Oct. 3, Oct. 4, and Nov. 13, read and approved.

C. Littlefield offered the following preamble and resolution:

Whereas, a judgment was obtained for four hundred and eighty-

three dollars on a renewal note of this company dated May 17, 1894, for four hundred and forty dollars and interest, negotiated by M. J. Shoecraft, who holds a receipt for one bond and one thousand
150 shares of stock collateral to said note, given by H. D. Sellick, and reciting that said collateral should be returned to this company on the payment of said note;

Therefore, resolved: That the treasurer of this company be authorized to make and negotiate a company note for amount of said judgment, and interest, and costs, and for two months, and give as collateral to said note two of this company's first-mortgage bonds.

Resolved: That upon the satisfaction of said judgment the treasurer be instructed to demand of said Sellick one bond and the one thousand shares of stock as per his receipt, and to give notice to any one claiming to own said collateral that the title thereto is fraudulent and will be contested by this company.

Ayes: Littlefield and Tucker, 2; No: Perry, 1. Resolution adopted.

Meeting adjourned to Thursday, Dec. 5, at 1 p. m.

C. LITTLEFIELD, *Sec'y.*"

Q. What bonds were issued under that resolution?

A. Two bonds to H. P. Bell.

Q. What was the consideration for them?

A. Amount of judgment against the company of five hundred and twenty-five dollars, I think.

Q. How old was that judgment?

A. About six months.

Q. Is there any further resolution?

A. We have skipped this one on page 42.

Mr. ARTZ: I offer in evidence minutes of a meeting of the board held March 13, 1894, appearing on page forty-two of the minute book, as follows:

151 "MAR. 13, 1894.

Directors met at call of the president.

Present: M. J. Shoecraft, W. W. Tucker, and C. Littlefield.

Voted to authorize the treasurer to hand Mr. Fred. Williams one of the company's first-mortgage bonds to secure him for endorsing the note of M. J. Shoecraft, dated Dec. 26, 1893, for seventy-eight dollars and interest, and C. Littlefield's note of March 6, 1894, for sixty-eight dollars for three months, or any renewals of either note or both; the proceeds to be applied on office rent.

Adjourned *sine die.*

C. LITTLEFIELD, *Sec'y.*"

Q. What bonds were issued under that resolution?

A. One bond.

Q. To whom?

A. Frederick Williams.

Q. What was the consideration for it?

A. Mentioned in the resolution, two notes, seventy-eight dollars

and sixty-eight dollars, with renewals continuously since 1894 and due, estimated five hundred dollars.

Q. What other bonds were issued and how?

A. As treasurer and with the consent of the president I gave one bond to W. R. Baird as collateral to my personal note, endorsed by the president, with the assent of the president.

Q. About when was this transaction?

A. June 29, 1895.

Q. Did the company at that time owe you any money?

152 A. They did.

Q. Was it more or less than five hundred dollars?

A. More.

Q. State the youngest coupon paid upon each bond.

A. Bond- No. 5, 6, 7, 61, 63, 65, 66 and 67, on each of these 1 to 4 inclusive. Bond No. 8; 1, 2 and 4. N. 9; 1, 2 and 4. No. 10; 1, 2 and 4. No. 11; 1 and 2. No. 12; 1 and 2. No. 13; 1 and 2. No. 17; 1 and 2. No. 18; 1 and 2. 19; 1 and 2. 20; 1 and 2 and 3. No. 21; 1 and 2. 22; 1 and 2. 23; 1 and 2. 24; 1 and 2. 25; 1 and 2. 26; 1 and 2. 27; 1 and 2. 37; 2, 3, 4 and 5. 38, 2, 3, 4 and 5. 39; 5. 47; 5. 51; 1 to 5; 52; 1 to 4. 53; 1 to 4; 54; 1 to 4. 55; 1 to 4. 56; 1 to 5. 57; 1 to 5. 58; 1 to 4. 56; 1 to 5. 57; 1 to 5. 58; 1 to 5. 59; 1 to 5. 60; 1 to 5. 97; 3, 4 and 5.

Q. Mr. Littlefield, what is the condition of the remainder of the bonds other than the numbers concerning which you have testified with respect to the coupon upon them?

A. The coupons were taken off up to the time they were due, that is the subsequent issue, so that the next coupon would fall due in January or July following.

Q. Who is the present president of the defendant company?

A. Matthew J. Shoecraft.

Q. How long has he been president?

A. Since the date of his election, July 10, 1890.

Q. Continuously from that time?

A. Up to the present time, continuously.

Q. Have you a record of the first meeting of the stockholders of the defendant company?

A. I have.

Q. What page does the minutes occur on?

153 A. Nos. 1 and 2.

Mr. ARTZ: I offer in evidence minutes of meeting held June 25, 1890, appearing on pages 1 and 2 of the minute book, as follows:

"*Minutes of Meeting Held June* 25, 1890.

The meeting was called to order by C. Littlefield, who nominated G. Livingston Morse, temporary chairman; nomination was seconded by W. W. Tucker and unani-ously carried.

C. Littlefield then proposed W. W. Tucker for temporary secretary; motion was seconded by R. H. Pettigrew, Jr., and was unanimously carried.

Waiver of notice of corporators was then agreed to by all present as per roll-call.

Roll-call of incorporators being made, all were found present as follows: M. J. Shoecraft, Calvin Littlefield, G. Livingston Morse, R. H. Pettigrew, Jr., and W. W. Tucker.

The chairman said: We were now ready for business, whereupon Mr. M. J. Shoecraft presented a duplicate copy of papers of incorporation, and a telegram from secretary of state of West Virginia, stating that the charter of this company was duly filed June 23, 1890, which was adopted.

On motion of W. W. Tucker, seconded by R. H. Pettigrew, Jr., it was

Resolved: That the said Gold Hill Mining Company issue one hundred first-mortgage bonds, of the denomination of five hundred dollars each, each bond bearing date of July 1, 1890, and bearing interest at the rate of ten per cent. per annum, payable semi-
154 annually, on the first day of January and July in each year, and to run five years from July 1, 1890; with the privilege of the said company paying off and redeeming the same sooner, by giving to the holders of said bonds six months' notice of the company's intention thus to do; to pay off said bonds and redeem the same on any day interest is payable, or on payment of six months' interest in advance; and the president and the secretary of said company are hereby authorized and directed to execute said bonds and mortgage for said company, and the said board hereby authorize and direct the seal of said company to be affixed to the same.

On motion of C. Littlefield, seconded by M. J. Shoecraft, the chairman, G. L. Morse, was elected trustee, for the bondholders. Motion carried.

On motion of W. W. Tucker, seconded by R. H. Pettigrew, Jr., Mr. G. L. Morse, was appointed to draw up a proper bond, have same executed and lithographed; also a stock certificate book, of two hundred certificates, total cost not to exceed ninety-five dollars.

On motion of M. J. Shoecraft, seconded by G. L. Morse, it was voted that the incorporators of the Gold Hill Mining Company be named as directors of said company. Motion carried.

On motion of C. Littlefield, seconded by M. J. Schoecraft, the company's seal was ordered to be made, and Mr. Shoecraft be a committee to have the same made. Motion carried.

Mr. Shoecraft reported that the by-laws were not quite ready, and the chairman suggested that he report a full set at a future meeting.

155 On motion, the meeting was declared adjourned, to the second Tuesday in July, 8th inst.

W. W. TUCKER,
Temporary Secretary."

Q. It appears that the following individuals were present at that meeting, namely: M. J. Shoecraft, Calvin Littlefield, G. Livingston Morse, R. H. Pettigrew, Jr., and W. W. Tucker. Can you tell me

whether these gentlemen held all of the stock of the company at that time or not?

A. They did.

Q. Was ever any demand for payment of coupons or principal of the bonds issued by this company made upon you by Mr. Williams?

A. There was.

Q. For which?

A. For coupons.

Q. Did he ever demand payment of the principal of you for the whole amount?

A. I think I forestalled that.

Q. Say what was done.

A. There was a proposition to sell the property and pay off all the bonds, that was in '92, I think, and we have been at work on some scheme of that kind ever since, including Mr. Whitney's effort.

Q. Did you communicate the facts to Mr Williams?

A. Yes. That we did not have the money; that efforts were being made to sell the property, and that we would pay the principal from out of it. Of course, the separate conversations I could not for the moment recall.

Q. Mr. Littlefield, you speak of conversations between you and Mr. Williams on the subject of these bonds, can you tell me
156 whether he at any time demanded payment of the principal from you or not—give me the best of your recollection on that?

A. As stated, we had numerous conversations—I do not recall—I do remember him stating that it was due—he was informed of all done.

Q. Was any payment made?

A. No.

Q. Was this matter of the bond that you took with the consent of Mr. Shoecraft ever brought to the attention of any other members of the board?

A. Brought to the attention of the board and stockholders.

Q. At what time was it that this bond was taken?

A. June 29.

Q. Any year?

A. Yes, '93.

Q. Do you remember how soon after it was brought to the attention of the board?

A. At the end of each year a statement was prepared showing what had been done, and presented to the stockholders and directors.

Q. Was it brought to their attention at the next meeting after it was taken?

A. It was.

Q. Was there ever any objection to this by stockholders or directors?

A. Not to my knowledge.

Q. Do you know whether Mr. Shoecraft owned as much as two-thirds of the stock of the company at the time when this mortgage was acknowledged?

A. I do not.
Q. Have you the stock book?
A. I have.
Q. Have you got it there?
A. Yes.

Q. From the records of stock book have you kept the
157 duplicate record in the certificate book? And where is the ledger?

A. I think the ledger is in Mr Pettigrew's desk.
Q. Will you get it?
A. Yes.
Q. Have you the certificate book of the defendant company in your possession?
A. I have.
Q. Tell me, if you can, the amount of stock in the name of M. J. Shoecraft at the date when the mortgage was acknowledged, namely, July 24, 1890.
A. One hundred and sixty thousand shares.
Q. Shares at what value?
A. Five dollars each.
Q. What was the entire capital of the company?
A. Eight hundred thousand dollars—one hundred and sixty thousand shares.
Q. Can you tell me what date this mortgage was acknowledged by the president and yourself?
A. I think the date of the acknowledgment.
Q. That is what?
A. Twenty-fourth day of July, 1890.
Q. Do you know why the mortgage was dated the 1st?
A. Yes.
Q. Can you say why?
A. The arrangement with the owner—the first of July. By agreement the mortgage was to commence when the settlement ended.

Cross-examination.

(By Mr. PERRY:)

Q. You say that on the twenty-fourth day of July the whole number of shares were issued to M. J. Shoecraft?
A. I do.
158 Q. As appears by certificate No. 1?
A. Yes.
Q. Certificate No. 1 (showing) is now before you?
A. Yes.
Q. Is that in a book?
A. Yes.
Q. What is it?
A. The stock book.

Mr. PERRY: I ask to have this book marked for identification.
(Marked "No. 1 for id.")

Q. Certificate No. 1 has never been taken out of the book?
A. It has not.
Q. It bears date the twenty-fourth day of July, 1890?

(Objected to on the ground that the certificate is the best evidence.)

A. It does.
Q. Look at certificate No. 2, and that has never been taken out of the book?

(Same objection.)

A. It has not.

Mr. PERRY: I offer certificates Nos. 1 and 2 in evidence.
(Marked Exhibit "C" and Exhibit "D," respectively.)

Q. Certificates Nos. 3, 5, 8, 9, 10, 11, 12, 14, 20 and 21 are now in the book, and all bear the twenty-fourth day of July, 1890, and were issued on that day, and have been returned since to be canceled?
A. Yes.
Q. These certificates were taken from the book, and have been returned and canceled?
A. Yes.
Q. Now, certificate No. 1 is in this book?
A. Yes.
Q. What was issued from it?
159 A. A certificate for three thousand two hundred shares to W. A. Beach, July 24, 1890.
Q. Stub No. 7—what was issued from that?
A. To C. D. Prescott, eight hundred shares, July 24, 1890.
Q. Look at stub No. 13—what was issued from that?
A. One thousand shares to H. Livingston Morse, trustee, July 24, 1890.
Q. I show you stub No 15—what was issued from that?
A. Five thousand shares to B. N. Shoecraft.
Q. That was July 24, 1890?
A. Yes.
Q. I show you stub No. 16—what was issued from that?
A. Five thousand shares to B. N. Shoecraft from No. 1.
Q. Stub No. 17?
A. Five thousand shares to B. N. Shoecraft from certificate No. 1.
Q. Stub No. 18?
A. To B. N. Shoecraft five thousand shares from 1.
Q. Stub No. 19?
A. Five thousand shares to B. *M.* Shoecraft from 1.
Q. These certificates have not been returned to be canceled?
A. They have not.

Mr. PERRY: I ask to have these certificates marked and read in evidence—the face of the certificates and stubs up to No. 21, inclusive.
(Marked Exhibts "E" to "R," and from "R" to "R 6," incl.)

160 Mr. ARTZ: Objected to as incompetent, immaterial and irrelevant, and inasmuch as it does not appear that the endorsement to said certificates are offered.

Q. Certificate No. 1, marked Exhibit "C," has never been separated from its stub?

A. It has not.

Q. And certificate No. 2 has never been separated from its stub?

A. It has not.

Q. All the other certificates about which you have testified, from No. 3 to No. 21, inclusive, have been separated from their stub at some time or other?

A. Yes, sir.

Q. And were those from three to twenty-one inclusive, when separated from their stubs, were they delivered to the persons whose names are noted in the body of them?

A. There are receipts for——

Q. Do you know whether they were delivered to each person who receipted for them?

A. I have the receipt of the person I did not deliver to. As you see, Mr. Shoecraft received some of them, and he delivered to the party in whose name the stock stood, and returned me the receipts.

Q. You say that Mr. Shoecraft delivered them?

A. Receipted for them.

Q. Receipted for them?

A. Yes.

Q. To whom were they delivered?

A. They were delivered to the person whose name was noted in the body of the certificate as owner.

(Objected to as incompetent, immaterial and irrelevant.)

A. I have Mr. Beach's receipt.

Q. Personally?

A. No.

161 Q. Have you in your possession any receipt or receipts for the delivery of these certificates?

A. I have.

Q. Show them (witness shows papers). Are these all you have got—these three?

A. I could only show these receipts for stock I did not deliver.

Q. You have three receipts for stock you did not deliver?

A. I think not, there were some I did not deliver; I should have to refer to the stubs.

Q. Have you any other receipts for stock delivered than the one handed me by you?

A. I think so.

Q. Where are they?

A. That is the office record on the stub.

Q. That is the receipt you refer to?

A. There are some mislaid.

Q. Are there any on the face of the stubs 1 and 2 which show re-

ceipts for stock delivered by you, and, if so, tell us on which stubs these are?

A. No. 5, sixteen hundred shares delivered by me. No. 8——

Q. In point of fact it was never taken out from the book?

A. It was not.

Q. So that you do not hold anybody's receipt for it, and never did?

A. It was not delivered.

Q. As to No. 9, what have you to say about a receipt for it?

A. Receipt on the stub, delivered to Morse.

Q. And you delivered it, did you?

A. I did.

Q. As to No. 10?

A. The same.

162 Q. You delivered it?

A. Yes.

Q. No. 11?

A. Same.

Q. 12?

A. Same.

Q. No. 13?

A. Same.

Q. No. 14?

A. Same.

Q. No. 15?

A. It is to B. N. Shoecraft, and receipted for by M. J. Shoecraft.

Q. To whom did you deliver it?

A. M. J. Shoecraft for B. N. Shoecraft.

Q. Nos. 16, 17, 18 and 19?

A. Same.

Q. No. 20?

A. Delivered to M. J. Shoecraft.

Q. And up to No. 20 none was delivered to M. J. Shoecraft for himself?

A. No. 1.

Q. Was that delivered to him?

A. Receipted for.

Q. Was No. 1 delivered to M. J. Shoecraft—I asked you if you delivered it to him?

A. Same answer.

Q. Was that called a delivery?

(Objected to as incompetent, immaterial and irrelevant, and not cross-examination.)

Q. Did you ever deliver No. 1 to M. J. Shoecraft?

A. I did at the office?

Q. What did he do with it?

A. He gave a memoranda.

Q. What did he do with it?

A. He says: "There, I receipted for that stock, and I request that

from that stock there be issued," and gave the memorandum, and that is the usual way.

Q. And that is the usual way?

A. Yes.

163 Q. That is the usual way you do it?

A. Yes.

Q. Now, all these deliveries of stock certificates from 1 to 21, inclusive, were on the twenty-fourth day of July, 1890, were they not?

A. They were.

(Objected to on the ground that the question is incompetent, immaterial and irrelevant.)

Q. And the only receipts that you have other than the three now shown are on the stubs of the stock book?

A. No.

Q. Where are the others?

A. There is one among Mr. Artz's papers, a receipt by Mr. Shoecraft for four bonds.

Q. Are there others?

A. For the moment I don't know.

Q. Now, you have shown three. I ask to have them marked and and put in evidance.

(Papers marked Exhibits "R 7," "R 8," and "R 9.")

Q. What is this statement that you have shown me—does that refer to stock about which you have been testifying?

A. No, I didn't intend to offer this; perhaps my attorney may.

Q. I did not ask you if you offered it.

Mr. ARTZ: I object as incompetent, immaterial, and irrelevant.

(Paper is handed to the counsel for the plaintiff. Counsel for the defendants requests that the paper be handed to him for further cross-examination. Paper handed to counsel.)

Mr. PERRY: I offer it in evidence.

164 (Objected to as incompetent, immaterial, and irrelevant, and not properly proved.)

Q. Look at the signatures at the bottom of the paper; do you recognize the one as your own, one as M. J. Shoecraft's?

(Same objection, with the final portion withdrawn.)

Q. Yes.

(Paper marked Exhibit "R 10.")

Q. You say that Mr. Artz has one receipt for stock delivered by you, and as to any other you do not know where they are, if there are any; is that what you say?

A. None that occur to me.

Q. I show you a book and ask you what it is.

A. Book of records of the Gold Hill Mining Company.

Q. It is the book, is it not, which you had before you most of the time when you were testifying for Mr. Artz?

A. It is.

Q. I call your attention to page 1, and ask you whose writing that is?
A. R. H. Pettigrew, Jr.'s.
Q. And whose signature to it?
A. W. W. Tucker's.
Q. You recall the events indicated there?
A. I do.
Q. And you know that Mr. Tucker was secretary of the meeting.
A. I do.
Q. Whose handwriting is on page 3?
A. Mine.
Q. Except the signature W. W. Tucker?
A. Yes.
165 Q. Whose handwriting is on page 5?
A. Mine.
Q. And on page 6?
A. R. H. Pettigrew, Jr.
Q. And the signature purporting to be the secretary of the meetings is yours?
A. Yes.
Q. Do you know whether the facts stated on page 6 are true?
A. I do.
Q. Do you know them to be true notes of the meeting?
A. I do.
Q. And as to page 7?
A. No, it does not appear that I was present.
Q. You cannot speak personally as to page 7, but can you say that they appear to be true notes of the meeting?
A. I take them to be.
Q. And on pages 9 and 10?
A. My writing.
Q. And to and including your first signature on page 11 and the second signature C. Littlefield is yours?
A. It is.
Q. And that page contains notes of the proceedings of the company?
A. Yes.
Q. As to page 12?
A. Same.
Q. Minutes of the proceedings of the company—all the entries?
A. Yes.
Q. All the writing refers to the proceedings of the company?
A. Yes.
Q. And that is so on page 13?
A. The same.
Q. Page 14, how as to that?
A. Same.
Q. And partly in your handwriting?
A. Yes.
Q. And page 15, is all in your handwriting?
A. Yes.

Q. Page 16?

A. Yes.

166 Q. Page 17 up to the first signature, C. Littlefield, is in your handwriting?

A. Yes.

Q. Pages 20, 21, 22, 23, 24, 25, 26, 27 and 28, all in your handwriting?

A. Yes.

Q. And the entries all refer to the acts of the Gold Hill Mining Company?

A. Yes.

Q. Page 29 is in Mr. Pettigrew's handwriting, is it?

A. Yes, signed by me.

Q. And the remainder of pages 30 and page 31 in your handwriting?

A. Yes.

Q. Pages 32, 33, 34, 35, all in your handwriting?

A. Yes.

Q. And the entries on page 36 are signed by you as secretary?

A. Yes.

Q. 37, 38, 39, you recognize these as minutes of meetings and all signed by you except one, one signed by M. J. Shoecraft?

A. Yes.

Q. As to pages 40 to 51, inclusive, examine them and state whether they are all the proceedings of the Gold Hill Mining Company?

A. They are.

Q. And have you been the custodian of the book from the beginning?

A. Yes.

Q. The entries are correct entries of the proceedings of the company, are they not, directors and stockholders?

A. They are.

Q. Were *they* any other meetings than those recorded that you know about?

A. Not that I recall.

Q. Did you ever hear of any others?

A. No.

Q. And you know from an examination of the book that the entries are correct, do you?

A. They are correct.

167 Q. I think you stated on your direct examination that Exhibit "A," of this date, being the mortgage put in evidence by the plaintiff, was not signed by the president, M. J. Shoecraft, and the secretary, C. Littlefield, until the twenty-fourth day of July, 1890.

A. I think I said about that time. My recollection is we were in a hurry to get through.

Q. So you do not recall whether it was signed that day or not? You remember the circumstances of acknowledging this exhibit?

A. Yes.

Q. Where was it done?

A. In the Morse building, 140 Nassau street, New York city.
Q. Do you recollect the time of day?

(Objected to as incompetent, immaterial and irrelevant.)

A. It was before lunch time—I could not be more specific.
Q. Were you and Shoecraft together?
A. Yes.
Q. Do you recollect the day of the month?
A. Not independent of the certificate.
Q. You would have to refer to the certificate for it?
A. Yes.
Q. Do you know that the date of the month in the certificate of acknowledgment is over an erasure?
A. No.
Q. Will you look at it?

(Looks at paper)

A. I shouldn't call it——
Q. And I call the court's attention to it.
Q. As to the time of the execution of the mortgage you have no means of determing the day, have you?

168 (Objected to as incompetent, immaterial and irrelevant, and on the ground that the witness has already answered the question.)

A. No other than the paper.
Q. I call your attention for a moment to the certificates book and to the certificates and stubs Nos. 1 to 21 inclusive, and ask you if you have any recollection independent of the entries on these certificates and stubs of the day on which the transactions occurred which they purport to state, the day of the month?
A. No, I don't think I could have told the day——
Q. There is no circumstance that fixes the day?
A. No.

Redirect examination:

Q. Can you tell me in whose writing the figures "24th" in the acknowledgment to the mortgage were written?
A. Mr. Shoecraft's, I think.
Q. Do you recognize it as his?
A. Yes.
Q. Can you also identify the names M. J. Shoecraft and Calvin Littlefield as they occur twice?
A. In my opinion, yes.
Q. Mr. Littlefield, look at the endorsement on certificate No. 1 and tell me whether the signature M. J. Shoecraft is genuine.
A. It is.

I now offer in evidence the endorsements on said certificate.

Q. Is that certificate canceled?

(Objected to as calling for a conclusion.)

Q. State the condition of the certificate?

169 A. Canceled.

(Objected to on the ground that the court can tell its condition.)

Q. How?

A. Signatures of the president and secretary punched out.

Q. Is that your method of canceling?

A. That is part of it.

Q. Is certificate No. 2 similarly canceled?

A. Yes.

Q. The remaining certificates pasted in the book concerning which you have testified up to certificate No. 21 are punched the same way, are they not?

A. They are.

Q. Mr. Littlefield, what is your age?

A. Seventy-four.

Q. You reside where?

A. In Belleville, N. Y.

Q. Referring to the minute book, will you tell me whether it was in your possession all of the time since the minutes were started?

A. Yes.

Q. That is, you had control of it all the time in your office and here?

A. Except that Mr. Perry used to see it.

Q. Who is Mr. Perry?

A. Andrew J. Perry, attorney for the company and a director.

Q. Is he the same gentlemen who appears in this action for the judgment creditors?

A. He is.

Q. Has it been in my possession for several months last past?

A. About two and a half months.

170 Recross-examination:

Q. When you say in my possession who is referred to in the question?

A. Mr. Artz.

Q. Mr. Artz, the counsel for the plaintiff?

A. Yes.

Q. Look at stock certificate book, marked for identification "No. 1," and at certificates in it Nos. 1 and 2—can you say that these certificates are cancelled by punching the holes in them?

A. In the names of the president and secretary.

Q. Who did that punching?

A. Since it was done?

Q. When was it done?

A. On this date.

Q. When was it done?

A. On the twenty-fourth day of July, 1890.

FREDERICK WILLIAMS, being first duly sworn, testified as follows:

(By Mr. ARTZ:)

Q. Mr. Williams, where do you reside?
A. Belleville, Jefferson county, New York State.
Q. Are you the Frederick Williams named as plaintiff in this action?
A. I am.
Q. Did you ever accept the trust delegated to you under the resolution of a meeting held March 4, 1891, in which the bondholders elected you trustee to succeed G. Livingston Morse, deceased?
A. I did.
Q. Have you acted as trustee to date?
A. I have.

171 Q. Have you ever made demand on this company for payment, if so upon what officer, of the indebtedness secured by this mortgage?

A. I made demand upon the treasurer of the company on behalf of all the bonds.
Q. Was such demand refused?
A. It was refused.
Q. Upon what ground?
A. No money in the treasury to do it with.
Q. Were you ever requested by any one to take action for the foreclosure of this mortgage and declare the whole amount due?
A. I was.
Q. What proposition?
A. I think it was sixty or seventy of the bonds.
Q. What did they request you to do?
A. To foreclose the mortgage.
Q. For what reason?
A. For its collection.
Q. Because of what?
A. Because of non-payment.
Q. Non-payment of what?
A. Non-payment of principal and interest on the bonds.
Q. You hold some of these bonds?
A. I do.
Q. Did you ever present them or the coupons for payment?
A. I did, one of them—presented by notary and protested for non-payment.

172 Cross-examination.

(By Mr. PERRY:)

Q. Do you own any of the bonds now?
A. I do.
Q. How many?
A. Sixteen, I think, personally, and two as collateral.
Q. How long have you held them?
A. I bought ten of them on the first sale of bonds by M. J. Shoe-

craft, those fifty issued to M. J. Shoecraft, and then in October of the same year I bought two and took three in payment of interest on the coupons, and one I bought second hand.

Q. You say that you bought—did you buy of Shoecraft?

A. I got them through Calvin Littlefield, as agent for him, I think. I paid par for them, one hundred cents on the dollar.

Q. How much did you pay for the others?

A. Two of them I bought eighty cents and the others I took for interest at par, and the one I took or bought for a debt and the debt was par or more.

Q. That equalled the amount of the bond?

A. Yes.

Q. Has the debt ever been paid?

A. No.

Q. No part of it?

A. No part of it.

Q. Do you recollect the time when you acquired the first bond?

A. Yes.

Q. What time was it?

A. That was in July, when they were first issued by the company.

173 Q. Was that July, 1890?

A. I advanced the money before that time.

Q. To whom?

A. To Mr. Littlefield to pay on the mine, and they allowed me interest up to the date of the bonds.

Q. When did you advance that money?

A. I think it was March, 1890. I think I handed it to Mr. Littlefield.

Q. Do you personally know what he did with the money?

A. I don't. I did not see him do anything with it.

Q. He did not pay it back to you?

A. No.

Q. Have you the receipt?

A. I have it, at home.

Q. Will you send it down to be annexed to your testimony?

A. I will if I can find it.

Q. Will you try to find it?

A. I will.

Q. And within what time will you exhaust your efforts to find it?

A. Oh, well a week.

Redirect examination:

Q. By eighty cents you don't mean that you paid eight- cents for a five-hundred-dollar bond?

A. No, eighty per cent. of that bond.

Q. Do you know what relations Mr. Littlefied had with this mine at the time you gave him his money?

A. He was acting as agent for M. J. Shoecraft, who claimed to have an option on the property out there, trying to raise money for him to purchase the mine.

Q. This is the same mine that the company purchased?
174 A. Yes. That is, he had a claim on it for redemption, something of that kind, and an option from the person who had purchased it at sheriff's sale.

Recross-examination:

Q. Your knowledge of what you have just stated is hearsay from Littlefield and Shoecraft?
A. Their admissions and claims.
Q. Made orally?
A. No, there was a written contract—they presented me with form of contract signed by both of them, and reports.
Q. For your examination?
A. Yes.
Q. Have you got them?
A. No. Mr. Shoecraft showed them to me.
Q. So that all your statements from them are hearsay?
A. Yes, and those reports.

Redirect examination:

Q. Do you remember where you made your demand on Mr. Littlefield for payment?
A. Yes. I made more than one demand on him, at Belleville and here at the office.

It is stipulated and agreed that the signature of the witnesses, Littlefield and Williams, to their foregoing testimony be
175 waived and the said testimony received and read to the same effect as if the signatures had been affixed according to the statute.

C. WALTER ARTZ,
Of Counsel for Complain-t.
ANDREW J. PERRY,
Of Counsel for Defendants.

STATE OF NEW YORK, } ss:
County of New York, }

I, Frederick H. Ridgway, a notary public in and for said county and State, duly commissioned and qualified, and authorized to administer oaths, and to take and certify depositions, do hereby certify that, pursuant to the notice issued and served in the civil cause dependent in the circuit court of the United States for the northern district of California, wherein Frederick Williams, trustee, is complainant and The Gold Hill Mining Company (a corporation), George C. Gaylord, Charles E. Maddrill and Dwight T. Rolfe, are defendants, I was attended at my office, No. 54 Wall street, New York city, New York, by C. Walter Artz, Esq., counsel for the complainant, and also by Andrew J. Perry, Esq., counsel for defendants Gaylord, Maddrill and Rolfe, on the date hereinbefore stated; that *that* the aforenamed witnesses, Calvin Littlefield and Frederick Williams, who were of sound mind and lawful age, and were by me first carefully exam-

ined and cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth; and they thereupon testified as is above shown, and that the depositions were stenographically reported and then transcribed on the typewriter by me. I
176 further certify that the reason for taking said depositions was, and is, and the fact was, and is, that all of the deponents live at Belleville, N. Y., more than one hundred miles from the place where the said issue is appointed by law to be tried; that I am neither of counsel nor attorney to either of the parties to said suit, nor interested in the event of said cause, and that it being impracticable for me to deliver said depositions and the exhibits thereto attached, with my own hand, into the court for which they were taken, I have retained the same for the purpose of being sealed up and directed with my own hand, and speedily and safely transmitted to the said court for which it was taken, and to remain under my seal until there opened.

As witness my hand and seal as such notary public at New York this eleventh day of August, 1898.

[NOTARIAL SEAL.] FREDERICK H. RIDGWAY,
Notary Public (32), *County of New York.*

It is hereby stipulated that in returning the testimony of the witnesses Littlefield and Williams to the clerk of this court the minute book of the defendant company and its stock certificate book may be for the present omitted as a part of this return, but shall be sent instead to Thomas S. Ford, solicitor for the plaintiff, to be by him held subject to the order of the court and produced upon such occasions as directed by the court, and at the final hearing, as part of the evidence taken before the above-named commissioner, and while in the hands of Mr. Ford subject to the inspection of the defendants' solicitor. The stipulation, however, shall not preclude the
177 defendants' solicitor from making any motion to the court in respect to the subject-matter that he may deem proper.

C. WALTER ARTZ,
Of Counsel for Complainant.
ANDREW J. PERRY,
Of Counsel for Gaylord, Maddrill, and Rolfe.

Mortgage.

This indenture made this first day of July, A. D. 1890, between The Gold Hill Mining Company, a corporation, duly organized and incorporated under the laws of the State of West Virginia, party of the first part, and G. Livingston Morse, of the city of New York, as trustee for the use and purposes hereinafter named, party of the second part,

Witnesseth: That, whereas, the party of the first part, for the purpose of securing payment of money advanced by certain parties to secure the title to its property, hereinafter named and described, and for securing sufficient funds for working capital, and to that end did, on the twenty-fifth day of July, 1890, duly pass and adopt a resolu-

tion directing that the said company shall issue bonds to be secured by first mortgage on all its mines and property, hereinafter described, to the amount of fifty thousand dollars ($50,00–) having five years to run, and to bear interest at the rate of ten per cent. per annum, payable semi-annually, with the privilege of paying same sooner upon the conditions hereinafter expressed.

And, whereas, the said company, under and in pursuance
178 of said resolution, have issued or is about to issue one hundred coupon bonds of the said company of five hundred dollars ($500) each, each bearing even date herewith, and payable in five years from date, with interest payable semi-annually at the rate of ten per cent. per annum, in the form and manner following: that is to say, said bonds to be one hundred in all, and of the amount of five hundred dollars each, bearing even date herewith, running five years, with interest at ten per cent., payable semi-annually at the office of the company, in the city of New York, with coupons attached thereto, or interest warrants indicating the interest to be paid semi-annually, with the privilege reserved to the Gold Hill Mining Company to pay off the said bonds sooner, on any day interest is payable, on giving six months' previous notice to the holders of said bonds of its intention thus to do, or, on paying six months' interest in advance at the time of paying off said bonds, and thus discharge and release the property from the lien of this mortgage, and have the same canceled of record.

Now, therefore, this indenture witnesseth, that the said party of the first part, for and in consideration of the premises, and the sum of one dollar to it in hand paid, the receipt whereof is hereby confessed and acknowledged, and for the better securing the payments of said bonds and interest, hath granted, bargained, sold, remised, released, aliened and conveyed, and by these presents doth grant, bargain, sell, release, alien and convey, unto the said party of the second part, as such trustee, his successor and assign, all and singular, the following-described premises and property, viz:

179 All and singular that certain quartz mining claim known as the Nevada City quartz mine, situate near Nevada City, in the county of Nevada, State of California, and particularly described as follows:

First. That certain portion of township sixteen (16) north, of range eight (8) east, Mt. Diablo meridian, and in the Nevada mining district, designated in the office of the United States surveyor general for California as lot No. 85, containing four and fifty-three one-hundredths (4.53) acres of land, more or less, and embracing one thousand (1,000) linear feet of the Schmidt quartz lode, being the land and mine patented to John J. Schmidt, Jr.; said patent dated September 28, 1890, and recorded in Book 1 of Patents, pages 666–'7–'8–'7–670–'71, records of Nevada county, California, to which patent and the record thereof reference is hereby made for a more full description.

Second. That certain other parcel of mining ground known as the Nevada City Extension gold quartz lode, situated in Nevada mining district in said county and State, embracing a portion

of sections two (2) and eleven (11), in township sixteen (16) north, range eight (8) east, Mt. Diablo meridian, containing fourteen and seventy-three one-hundredths (14.73) acres of land, more or less, and embracing fourteen hundred and ninety-nine and five-tenths ($1,499\frac{5}{10}$) linear feet of the said Nevada City Extension quartz lode, said ground being the claim patented by the Government of the United States to the Nevada City Gold Quartz Mining Company on the fifteenth day of March, 1883, which patent was duly recorded in the office of the county recorder of Nevada county,
180 California, Book 2 of Patents, pages 25-'6-'7-'8-'9 and 30, records of Nevada county, to which patent and record thereof reference is hereby made for a more particular description.

Third. That certain portion of the Leutje and Schwartz placer mine, commencing at the northeast corner of said placer mine, and extending thence south on the east line of said mine to a point fifty (50) feet north of the main flume in Wood's ravine; thence running due west to the west line of said placer mine; thence north on the west line of said placer mine to the northwest corner thereof; thence east on the north line of said placer mine to the place of beginning—containing fifteen (15) acres, more or less. Said Leutje and Schwartz placer mine is covered by a patent from the United States, which patent is of record in the office of the county recorder of Nevada county in Book 41 of Deeds, pages 506-'7, to which patent and record reference is hereby made

Together with all quartz mills, hoisting works and machinery of every kind, and all iron pipe, cuts, tunnels, rights of way, privileges, easements, and improvements, to said mine belonging or used in connection therewith, or with any part thereof. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and remainder, rents, issues and profits thereof, and all the estate, right, title, interest, property and demand whatsoever, as well in law as in equity of the said party of the first part, of, in and to the same, and every part thereof, to have and to hold the same unto the said
181 party of the second part, his successors and assigns forever.

Provided, however, and these presents are upon the express condition that if the said party of the first part, its successor, or successors or assigns, shall well and truly pay, or cause to be paid unto the holders of the said bonds so issued or about to be issued as aforesaid, the principal and the interest to grow due thereon to the said holders respectively at the times and in the manner mentioned in the said bonds, and in the coupons or interest warrants thereto annexed, according to the true intent and meaning thereof, then these presents and the estate hereby granted shall cease, determine and be null and void.

And it is hereby covenanted and agreed, by the party of the first part, that it will pay and discharge all taxes or other charges which may at any time be or become a lien on the premises and property hereinbefore described, the payment whereof shall be material and necessary to protect and secure the payment of said bonds or interest thereon.

And it is further covenanted and agreed by the party of the first part that it will keep the buildings and machinery at and on the mines of the company insured in some good and solvent insurance company, in a reasonable amount, loss, if any, payable to the holders of said bonds, or to the said trustee for the use and benefit of the holders of said bonds.

And it is further covenanted and agreed by the party of the first part that it will keep in said mines of the company at all times
182 sufficient amount of ore available to pay off said bonds and interest, net, over and above all the expenses of mining and milling.

And it is further covenanted and agreed by the party of the first part that if any default shall be made in the payment of any of the said bonds, or coupons or interest warrants mentioned aforesaid, or any part thereof, or shall neglect or refuse to keep the buildings and machinery on the mines insured in some good, solvent insurance company, in a reasonable sum or amount, the loss, if any, payable to the holders of said bonds or to the said trustee for their benefit, or if said company shall fail to keep in reserve and available in the said mines of the company, sufficient amount of ore at all times to pay off said bonds and interest, net, over and above all mining and milling expenses, then on default thereof or of any of the aforesaid covenants or agreements, or any part thereof, then if the same shall remain unperformed, or any one of them shall remain unperformed, the space of ninety days, then, from thenceforth, on request of a majority in interest of said holders of said bonds then outstanding, it shall be lawful for the said party of the second part as such trustee, his successors and assigns, for and in behalf of the holders of said bonds, to enter upon and take possession of all and singular the property and premises hereinbefore described, and to sell and dispose of the same and all benefit of the equity of redemption of the said party of the first part, its successors or assigns, therein at public auction, according to law, giving due notice of the time and place of sale, and said party of the second part, as attorney of the said party of the first part, by these presents duly constituted, authorized and appointed, to make, ex-
183 ecute and acknowledge and deliver to the purchaser or purchasers thereof, his or their heirs and assigns, a deed or deeds of conveyance, bill of sale or other instruments in law, sufficient to vest in him or them the said mortgaged premises or any part thereof, and out of the moneys received, or arising from such sale or sales, to keep and retain the principal and interest which shall then be due on said several bonds to the respective holders and owners thereof, and to pay over the same to the said holders of said bonds, each his share or *pro rata* share thereof, after paying out of such funds the costs, expenses, and charges of such sale of said mines and property, rendering the overplus, if any there shall be, to the said party of the first part, its successor or successors or assigns.

And it is further mutually covenanted and agreed that, in case of death, resignation, or inability to serve at any time of the party of the second part as such trustee, then and in such case a trustee may

be appointed by a majority of the holders of said bonds then outstanding and unpaid, upon giving previous notice to all the holders of said bonds of one month of the time and place of a meeting of the board of directors of said Gold Hill Mining Company, and at such meeting a majority of the holders of such bonds may vote in person or by proxy, and the secretary of said company shall, at such meeting, on counting the number of votes given or cast, declare the person elected by the majority of all votes cast, and thereupon such person so elected shall be the trustee of and for all the holders of such bonds, with the same powers and duties as are now herein devolved upon the said party of the second part. At such meeting each bond shall have one vote.

184 In witness whereof, the said party of the first part has hereunto caused its corporate seal to be affixed and these presents to be subscribed by its president and secretary on the day and year first above written.

M. J. SHOECRAFT, *President.*

Attest: C. LITTLEFIELD, *Secretary.*

[Corporate Seal the Gold Hill Mining Company.]

STATE OF NEW YORK, } ss:
City and County of New York, }

On this twenty-fourth day of July, A. D. 1890, before the undersigned, a notary public, in and for the county and State aforesaid, came M. J. Shoecraft and Calvin Littlefield, to me known, who, being by me duly sworn, each for himself did depose and say: That the said M. J. Shoecraft was the president, and the said Calvin Littlefield was the secretary of the said Gold Hill Mining Company, the corporation described in and which executed the foregoing mortgage; that the seal affixed to the foregoing instrument is the corporate seal of said company, and was thereto affixed by order of the board of directors of said company, and that they respectively signed their names thereto by the like authority.

[NOTARIAL SEAL.] M. H. DILLENBECK,
Notary Public, City and County of New York.

185 STATE OF NEW YORK, } ss:
City and County of New York, }

I, Edward F. Reilly, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that M. H. Dillenbeck, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same. And, furthur, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the twenty-fourth day of July, 1896.

EDWARD F. REILLY, *Clerk*.

(Endorsed:) Recorded at the request of B. N. Shoecraft, July 30, 1890, at 45 min. past 4 o'clock, p. m., in Book 24 of Mortgages, page 157 *et seq.*, records, Nevada Co., Cal. A. B. Brady, recorder.

Whereas, by a resolution of the board of directors of the Gold Hill Mining Company, duly passed and adopted on the twenty-fifth day of June, 1890, and in accordance with and in pursuance of said resolution, a mortgage was executed and delivered to G.
186 Livingston Morse, as trustee, for the use and purposes therein mentioned, on the first day of July, 1890, by the president and secretary of said company, they being authorized and directed in and by said resolution thus to do, and duly acknowledged by them, and the corporate seal of said company duly affixed to said mortgage by the like authority of said board of directors.

And whereas, in line twelve on page one of said mortgage, by mistake or inadvertence, the words and figures "the 25th day of June" was omitted in referring to said above-named resolution of said board of directors, and the words, viz: "the — day of July" was therein stated. And whereas, also, on page five of said mortgage and in line twenty-three, counting from the top of the page, the word "ninety" was by a like mistake or inadvertence omitted.

Now, therefoce, to correct the two above mistakes, it is hereby and herein, by the board of directors of said Gold Hill Mining Company, at a regular meeting of said board, duly called and held on the eighth day of August, 1890, at the office of the company, in the city of New York, resolved: That the words and figures on page one in line twelve of said mortgage, to wit, "the 25th day of June," be inserted therein and the word "July" erased therefrom, and that the word "ninety" be inserted in said line twenty-three on page five of said mortgage, between the words "space of" and "days."

And the secretary of said Gold Hill Mining Company, Calvin Litlefield, is hereby and by these presents directed and authorized to make the changes as above stated in said mortgage and,
187 when done, to have the same force and effect in all respects as if inserted therein at the date of said mortgage, or at the time of the execution thereof, and the recorder of Nevada county, in the city — and State of California, where said mortgage is recorded, is also, by like authority, authorized and directed to make the same insertions and changes on the record of said mortgage as are authorized and directed herein and hereby to be made by the said secretary, Calvin Littlefield. And the said secretary, Calvin Littlefield, and the president of said company, M. J. Shoecraft, are, by these presents, authorized and directed to execute this paper for and in behalf of said company by signing their respective names hereto, and by the like authority are they directed and authorized to affix the corporate seal of said Gold Hill Mining Company hereto.

In witness whereof the said Gold Hill Mining Company has hereunto caused its corporate seal to be affixed, and these presents to be subscribed on this eighth day of August, 1890, by its president and secretary.

M. J. SHOECRAFT, *President.*
C. LITTLEFIELD, *Secretary.*

[Corporate Seal Gold Hill Mining Company.]

The undersigned, G. Livingston Morse, mortgagee and trustee, named in the mortgage, and mentioned in the foregoing paper and resolution, hereby consents to the changes and modification and alteration mentioned in the foregoing paper and resolution of the board of directors of the said Gold Hill Mining Company to
188 be made in said mortgage therein named, and hereby authorize- the said secretary of said company, Calvin Littlefield, to make said changes, corrections and alterations named and authorized to be made in the said mortgage, as stated in the foregoing paper, and do-, also, authorize and direct the recorder of the county of Nevada in the city of Nevada and State of California, where the same mortgage is recorded, to make the like and same alterations, changes and corrections in the record of said mortgage as are named and mentioned in the foregoing paper and resolution.

In witness whereof I have hereunto set my hand and seal this eighth day of August, 1890.

G. LIVINGSTON MORSE, *Trustee.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

On this eighth day of August, 1890, before the undersigned, a notary public, in and for the county and State aforesaid, came M. J. Shoecraft and Calvin Littlefield, to me known, who, being by me duly sworn, each for himself, did depose and say that M. J. Shoecraft is the president and the said Calvin Littlefield is the secretary of the said Gold Hill Mining Company, the corporation described in and which executed the foregoing resolution and paper; that the seal affixed to the foregoing paper is the corporate seal of the said company, and was thereto affixed by order of the board of
189 directors of said company, and that they respectively signed their names thereto by the like authority.

[NOTARIAL SEAL.] JNO. J. GLEASON,
Notary Public, Queens Co.

Certificate filed in N. Y. Co.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

On this eighth day of August, in the year one thousand eight hundred and ninety, before me personally came G. Livingston Morse, to me known and known to me to be the individual described

in and who executed the foregoing instrument, and he thereupon duly acknowledged to me that he had executed the same.

[NOTARIAL SEAL.] JNO. J. GLEASON,
Notary Public, Queens Co.

Cert. filed in N. Y. Co.

EXHIBIT "R 7."

(F. H. R. 7–28–'98.)

Received of M. J. Shoecraft, Calvin Littlefield, D. E. Shuart and W. W. Tucker, parties named in an agreement and subscription paper (the last three named being trustees therein named for the use and purpose therein named), dated on the twelfth day of Dec., 1889, two bonds of five hundred dollars each, and bearing date July 1, 1890, with ten coupons attached to each bond, with ten per cent. interest, payable semi-annually, secured by mortgage *pro*
190 *rata*, as in said subscription paper stated, and sixteen hundred shares of the stock of the Gold Hill Mining Company, the said bonds and stock having been issued by said company, with intent and in accordance with the agreement in said subscription paper stated, of Dec. 12, 1889, aforesaid, and the same are received by me as my part of the bonds and stock for the one thousand dollars subscribed by me, and the said trustees in said agreement and subscription paper named are hereby released from all further action as such trustees, and all parties to said subscription paper are hereby released from any further obligation thereon growing out of the same.

In duplicate.

Dated July 24, 1890.

HERMAN D. SELLECK.

(Endorsed:) Receipt of H. D. Selleck for two bonds and sixteen hundred shares of the Gold Hill Mining Company's stock. In duplicate.

EXHIBIT "R 8."

(F. H. R. 7–28–'98.)

Received of M. J. Shoecraft, Calvin Littlefield, D. W. Shuart and W. W. Tucker, parties named in an agreement and subscription paper (the last three named being trustees therein named for the use and purpose therein named), dated on the twelfth day of Dec., 1889, four bonds of five hundred dollars each, and bearing date July 1, 1890, with ten coupons attached to each bond, with ten per cent. interest, payable semi-annually, secured *pro rata* by a mortgage as in said subscription paper stated, and three thousand and two
191 hundred shares of the stock of the Gold Hill Mining Company, the bonds and stock having been issued by said company, with intent and in accordance with the agreement in said subscription paper stated of Dec. 12, 1889, aforesaid, and the same a e received by me as my part of the bonds and stock for the two

thousand dollars subscribed by me, and the said trustees in said agreement and subscription paper named are hereby released from any further action as such trustees, and all parties to said subscription paper are hereby released from any further obligation therein or growing out of the same.

In duplicate.

Dated July 24, 1890.

WM. A. BEACH,
Syracuse, N. Y.

(Endorsed:) Receipt of Wm. A. Beach for four bonds and three thousand two hundred shares of Gold Hill mining stock. In duplicate.

EXHIBIT "R."

(F. H. R. 7-28-'98.)

Received of M. J. Shoecraft, Calvin Littlefield, D. W. Shuart and W. W. Tucker, parties named in an agreement and subscription paper (the last three named being trustees therein named for the use and purpose therein named), dated on the twelfth day of December, 1889, one bond of five hundred dollars, bearing date July 1, 1890, with ten coupons attached thereto, with ten per cent. interest, payable semi-annually, secured *pro rata* by mortgage, as in said
192 subscription paper stated, and eight hundred shares of the stock of the Gold Hill Mining Company, the bond and stock having been issued by said company with interest, and in accordance with the agreement in said subscription paper of December 12, 1889, aforesaid, and the same is received by me as my part of the bonds and stock for my subscription of five hundred dollars, and the said trustees in said agreement and subscription paper named are hereby released from any further action as such trustees, and all parties to said subscription paper are hereby released from any further obligation therein or growing out of the same.

C. D. PRESCOTT.

In duplicate.

Dated July 24, 1890.

(Endorsed:) Receipt of C. D. Prescott for one bond and eight hundred shares of Gold Hill mining stock. In duplicate.

EXHIBIT.

(*Memorandum of Settlement.*)

(F. H. R. 7-28-'98.)

Memorandum of settlement between M. J. Shoecraft and Littlefield and Tucker, trustees named, with subscription paper. Dated Dec. 12, 1889, as follows, viz:

193 *Brief Statement.*

Littlefield, Tucker & Co. to M. J. Shoecraft.

DR.

To subscription funds L. Tucker & Co	$18,000
" interest on their subscription $500	500
" amount subscribed by Wm. A. Beach	2,000
" " " B. N. Shoecraft	2,000
" " " H. D. Selleck	1,000
" " " G. L. Morse	1,000
" " " C. D. Prescott	500
Total am't (including L. F. & Co. int.)	$25,000

CR.

By amount paid Citizens' bank	$22,500	
" sundry items paid by Littlefield	200	
" notes of Littlefield to M. J. S.	600	
" part of Prescott's check	75	
" part of Beach's 1st note	125	
" note of Beach which M. J. S. had avails of	500	
" interest items above on S. Tucker & Co. sub	500	
		24,500
Balance due M. J. Shoecraft		$500

Balance (avails of Beach note was in hands of Littlefield & Tucker) $500.

Now, M. J. S. was to have of the amount subscribed two thousand ($2,000) dollars; the above balance of five hundred dollars
194 clearly belongs to him. And, should it be said that the said trustees had some trouble and were to some expense to obtain the funds the answer is as follows, viz:

1. They have all had their money paid back. That is, they have had two (2) bonds for every one thousand dollars advanced for $18,000	36 bonds
2. For the item of $500 ints. 500	1 bond
Total	37 bonds

3. They have 1 per cent. of the entire property as bonds in stock, hence $18,000 gives..... 29,600 shares
4. The 2d bonds in stock..... 9,886 "

Total bonus ..... 39,486 "

Hence, it will be seen they get back every dollar subscribed, and five hundred interest thereon, in the above amount of bonds 37—and they get also bonus as above stated of 39,486 shares of stock—I trust this brief statement will be at once considered fair and readily adopted.

July 1, 1890.—The above correct and is thus settled.

M. J. SHOECRAFT AND
C. LITTLEFIELD,
W. W. TUCKER.

(Endorsed:) Opened and refiled Sept. 21, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

195 *Correction of Testimony of Littlefield.*

BELLEVILLE, *Aug.* 13, 1895.

F. H. Ridgway, Esq., 54 Wall St., New York.

DEAR SIR: Your favor with copy of testimony rece'd.

In correction:

Page 1. For two last lines; "since the election of permanent officers, July 10, 1890. Prior to that I had possession of the records."

Page 14. Line 11 from top; strike out "29" and insert "20."

Page 8. Strike out 10 in line 8, and insert 17 in each place. Add No. 3-2 and No. 4. 4., so as to read: "Mr. Tucker presented coupons; No. 1, 17; No. 2, 17; No. 32, No. 4. 4; total 40, and rec'd 2 bonds."

Page 21. Omit lines 15 and 16 from top, as this matter is correctly stated in lines 7 to 12 from bottom of page 20.

Page 24. Lines 11 to 12 from bottom read July 10, in lieu of July 1.

Page 27. Line 2 from bottom read "93" in lieu of 94.

Page 41. Line 13 from top read "2" in lieu of 20.

Page 41. Line 17 from top read "2" in lieu of 12.

Page 42, line 7, omit the words "that I received," and insert the word "of," so as to read "date of the bonds." I do not find, in a hasty glance of the testimony, reference to the resolution of July, 1891, authorizing exchange of bonds for coupons, and providing for interest on past-due coupons not exchanged. See lines 4 and 5, page 6.

196

Respectfully, C. LITTLEFIELD.

Whereas, the witness, Calvin Littlefield, in a letter written by him, bearing date August 13, 1898, suggested corrections to his testimony, which letter, containing such suggestions and corrections, is hereto annexed. Now, therefore, it is hereby stipulated that such letter and this stipulation may be annexed to the original return of

testimony to be made by the commissioner, F. H. Ridgway, Esq., and that said witness has corrected his testimony accordingly, and that waiver of signature to said testimony by the witness, as corrected, is renewed and continued.

Dated August 22, 1898.

C. WALTER ARTZ,
Of Counsel for Complainant.
ANDREW J. PERRY,
Of Counsel for Defendants Gaylord, Maddrill, & Rolfe.

(Endorsed:) Filed Aug. 29, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

197 In the United States Circuit Court, Ninth Circuit, Northern District of California.

FREDERICK WILLIAMS, Trustee, Complainant,
vs.
THE GOLD HILL MINING CO. (Corporation) ET AL., Defendants.

Stipulation Admitting Evidence.

It is hereby stipulated that the annexed certified copy of the certificate of incorporation of defendant in the above-entitled cause is hereby offered in evidence, and may be considered in evidence upon the trial of the cause, subject to the objections of defendants Gaylord, Maddrill and Rolfe, that the said evidence is irrelevant and immaterial.

Dated October 5, 1898.

THOS. S. FORD,
Attorney for Complainant.
J. M. WALLING,
Attorney for Defendants.

Certificate of Incorporation.

(Vignette.)

STATE OF WEST VIRGINIA:

I, Wm. A. Ohley, secretary of the State of West Virginia,
198 hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in words and figures following:

We, the undersigned, agree to become a corporation, by the name of the Gold Hill Mining Company, for the purpose of purchasing, operating, managing and working mines, in the State of California and elsewhere, to work the same, extract ore therefrom, gold, silver or other metal, and to do all and everything that may be necessary to be done in mining and milling and working ores, turning the

same into bullion, or sell the same with the mines and property of the company. To erect tenant-houses on the mining land of the company, to be used and managed for the use, interest and benefit of the company, in such way and manner as may seem best and most desirable.

Which corporation shall have its principal office to transact its business in the city of New York, and State of New York, and have a branch office in which also to transact business in the city of Nevada, or at the mines of the company, near said city, in the State of California, where the mines and property now owned by the said corporators and others are located. Said corporation to expire on the twentieth day of June, 1930.

And, for the purpose of forming said corporation, the undersigned have subscribed to the capital stock thereof, paying therefor in valuable mining property, the sum and amount of eighty-five thousand dollars, and have paid in for the use and ownership of said company in valuable mines and mining property the sum and value of eighty-five thousand dollars.

199 The capital stock of said corporation shall be eight hundred thousand dollars, to be divided into one hundred and sixty thousand shares of the par value of five dollars per share, with the privilege of increasing the capital stock by the purchase of mines and mining property, or otherwise paying therefor by issuing stock of the said corporation or company for the same, to the amount of one million five hundred thousand dollars, and the stock to be issued by said corporation for such mines and mining property, now or hereafter, to be full paid up stock, at the par value of five dollars per share, and is to be non-assessable.

It is the intention of each corporator and subscriber herein named, and the formation and incorporation of this company is intended to be, and is, in pursuance of and in accordance with the laws of the State of West Virginia (Code ch. 58, and section twenty-four, as amended by Acts of 1882, ch. 69), allowing a company or corporation to purchase mines and mining property for the use and benefit of said corporation, and pay therefor in stock of said company.

The names and residences of the undersigned incorporators, and who are to manage the affairs and business of said corporation, or until others are elected and qualified, are M. J. Shoecraft, residing at Oneida, Madison county, N. Y., subscribing for and holding five thousand nine hundred shares of the capital stock of said company; Calvin Littlefield, residing at Belleville, Jefferson county, and State of New York, subscribing for and holding five thousand shares

200 of the capital stock of said company; W. W. Tucker residing in the city and State of New York, subscribing for and holding five thousand shares of the capital stock of said company; G. Livingstone Morse, residing at Yonkers, in the State of New York, subscribing for one thousand shares of the capital stock of said company; R. H. Pettigrew, residing in New York city, in the State of New York, subscribing for and holding one hundred shares of the apital stock of said company. All of said corporators reside in the

State of New York, and the business of said corporation is to be carried on outside of the State of West Virginia.

M. J. SHOECRAFT.
C. LITTLEFIELD.
W. W. TUCKER.
R. H. PETTIGREW, JR.
G. LIVINGSTONE MORSE.

Wherefore, the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twentieth day of June, nineteen hundred and thirty, a corporation by the name and for the purposes set forth in said agreement.

Given under my hand and the great seal of the said State, at the city of Charleston, this twenty-third day of June, eighteen hundred and ninety.

[GREAT SEAL.] WM. A. OHLEY,
Secretary of State.

201 STATE OF WEST VIRGINIA, }
Office of Secretary of State. }

I, Wm. M. O. Dawson, secretary of the State of West Virginia, hereby certify that the foregoing writing, dated the twenty-third day of June, eighteen hundred and ninety, is a true and correct copy of the certificate of incorporation of the Gold Hill Mining Company, a corporation created and formed under the laws of said State, as appears from the records of corporation in my said office.

Given under my hand and the great seal of the said State, at the city of Charleston, this nineteenth day of September, eighteen hundred and ninety-eight.

[GREAT SEAL.] WM. M. O. DAWSON,
Secretary of State.

(Endorsed:) Filed October 6, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

United States Circuit Court, Northern District of California.

WILLIAMS
vs.
GOLD HILL M. CO. } No. 12531.

DEFENDANT'S GENERAL EXHIBIT No. 1.

The Gold Hill Mining Company. Property located at Nevada City, Nevada county, California. Incorporated June 23, 1890, under the laws of the State of West Virginia. Brief description of property and by-laws.

202 The Gold Hill Mining Company. Property located at Nevada City, Nevada county, California. Incorporated June 23, 1890, under the laws of the State of West Virginia. Principal

office of the company, and secretary and treasurer's office, No. 60 Broadway, New York. Branch office, which is the general manager's office, Main street, Nevada City, Nevada county, Cal.

List of officers for 1890—President, M. J. Shoecraft, Oneida, N. Y.; vice-president, G. Livingston Morse, New York city; secretary and treasurer, Calvin Littlefield, New York city; general manager, Byron N. Shoecraft, Nevada City, Cal.; board of directors: H. J. Shoecraft, Calvin Littlefield, W. W. Tucker, G. Livingston Morse, R. H. Pettigrew.

Location and Brief Description of the Property of the Gold Hill Mining Company.

The property of the company is near Nevada City, Nevada county, California. Nevada county has been, from the very commencement of gold-hunting in California, one of the best mining counties in the State.

Nevada City is the county-seat of Nevada county, with a population of six thousand inhabitants, situate about midway between the foothills and the heights of the Sierra Nevada mountains, having an equable climate, without the severity of the highest ranges, little snow, not very cold, and at the same time free from the extreme and disagreeable hot weather of the plains. The air is always pure, and most of the year dry and invigorating. The best of good, cold water trickles down the mountain sides. At the base of the
203 mountains, and all through to Nevada City, abundance of fruit is raised of all kinds, except that of the tropical climate.

Nevada City is reached by a narrow-gauge railway, twenty-two miles in length, connecting it with Colfax, a point on the Central Pacific road. Many mines are so high in the Sierras that they are almost inaccessible in winter, on account of the deep snowfalls, and, in summer, by reason of the steep and abrupt declivities of the mountains, besides being far from railroad communication or good roads of any kind. The same difficulties are met with in very much of the silver mining region, both in the States of Nevada and Colorado. Having no facilities for freighting, the value of the mines is largely consumed by time and expense in handling freight to and from them at exorbitant prices. Not so with these mines in and about Nevada City. The mines of this company are so near the city, and favorably situated in all respects, so easy of access, the principal mine being a short distance from the railroad, only three-quarters of a mile from the city, with good wagon road leading from the city to the mines, with plenty of timber near by, that they can be worked cheaply, and with equal facilities at all seasons of the year.

Nevada county contains one of the best mining districts in the State. From twelve to fifteen millions of dollars were taken from the gulches and ravines in and about Nevada city before any knowledge of the extensive quartz-mining was known. Every gulch and ravine in the county has been worked over, and immense quantities of gold taken therefrom, and within a radius of

a few miles from the mines of this company it is estimated
204 that over one hundred million dollars of gold have been taken from the mines.

This property consists of about forty acres of land, with a lode or vein of quartz-bearing gold two thousand three hundred and fifty feet in length, running nearly through the center of the same, with a parallel vein or lode seven hundred and fifty feet in length, making upward of three thousand feet of quartz-veined lode bearing gold in this property. A United States patent covers the whole property. There are hoisting works on the lower portion of the mines, with a twenty-stamp mill and eight Frue concentrators, a large amount of copperplate. Also mill-house, concentrating-room, carpenter shop, blacksmith shop, timber-house, dry-rooms, etc., all in good condition, needing some little repairs. Also three engines for hoisting, pumping and milling, three boilers, three Pelton water wheels, with pumps, gearing plates, rods, etc.

There has been recently erected on the upper or northern part of the mines new hoisting works, preparatory for the erection of a twenty (20) stamp mill. An incline shaft has been sunk on the vein at the mill nearly one thousand feet down, making a perpendicular of about five hundred and fifty feet below the surface, and levels run both ways from the incline shaft, making nearly one thousand feet levels, or drifts, opening up the mines.

A drain tunnel, connecting the upper and lower hoisting works, has been run five hundred feet below the surface, continuing beyond the lower works on the main down to Deer creek, a distance of nearly three thousand feet, which adds immensely to the
205 value of the property. Mining engineers and experts estimate that its value to the future working of these mines is worth one hundred thousand dollars. The machinery is all run by water-power at present, but all the steam engines and boilers are preserved and kept at the mines, so that in case of accident or lack of water at any time, they can be used.

There has been taken and milled, ore from the southern lower portion of the mine four hundred and forty thousand dollars. This large property, including all the machinery and the dead work done, has all been paid for (except twenty-five thousand dollars) from the output of the mine. The machinery also cost over forty thousand dollars. Several mining engineers and experts have examined this property, and all pronounce it a very valuable property—such as ex-Governor Blasdel and A. B. McCan, of San Francisco; W. F. Englebright of Nevada City, Cal., and H. A. Spears of New York city. The reports of these mining engineers show that there is above the eighth level upward of five hundred thousand dollars in the southern and northern portions of the mines, net, over and above all expenses of mining and milling the ore, while the ledge or vein of ore continues strong in the lowest lead worked, in fact, increases in thickness, showing that in all probability it will thus continue to a very great depth, assuring permanency for very many years in the future.

This company expects to start up the work at the mines about the first of August, and feels confident of success. Having made

arrangements for trustworthy, competent and reliable management, there can be no doubt of the great value of these mines, and
206 that they will in a few months be paying dividends, and will continue that to do for many years to come.

By-Laws of the Gold Hill Mining Company.

ARTICLE I.

This company shall be known as "The Gold Hill Mining Company," and shall have a capital stock of $800,000 divided into one hundred and sixty thousand shares of the par value of $5 each.

ARTICLE II.

SEC. 1. There shall be a board of directors, five in number, elected at the first meeting of the corporators, and thereafter at the annual meeting of the stockholders. The directors shall hold their office for one year after they are elected, and until their successors be elected and qualified. And any, or all, of the directors may reside out of the State of West Virginia.

SEC. 2. The general officers of the company shall consist of a president, vice-president, treasurer, secretary and general manager, all of whom shall be chosen by the board of directors.

SEC. 3. The board of directors shall, at their first meeting, appoint a secretary, who shall perform such duties as are customary for such officer and as is hereinafter required, and treasurer and general manager.

SEC. 4. No stockholder shall be eligible for election as a member of the board of directors unless he is a *bona fide* holder of one hundred shares of the capital stock of the company at the time of his election.

207 ARTICLE III.

SEC. 1. The president shall preside at all meetings of the directors and of the stockholders. He shall sign as president, all certificates of stock, and all contracts and other instruments in writing which have been first approved by the board of directors. He shall have the casting vote in the case of a tie at all meetings of the stockholders or directors. He shall call the directors together whenever he deems it necessary for the interest of the company so to do, and shall report at each annual meeting the condition and prospects of the company, with such recommendations as he shall deem proper.

SEC. 2. In the absence or disability of the president, the vice-president shall perform the duties of the president.

SEC. 3. It shall be the duty of the treasurer to keep safely all moneys and bullion belonging to the company, and disburse and sell the same, under the direction of the board of directors. At each annual meeting of the stockholders he shall submit a complete and full statement in writing of all his accounts for the past year, with the proper vouchers, which shall be open for examination and inspec-

tion by any stockholder at such annual meeting; and he shall give bonds for the faithful discharge of his duties and the faithful accounting to the company for all moneys, bullion, and property which may in any way come into his hands or under his control, with such sureties as the board of directors shall direct and approve, and he shall discharge such other duties pertaining to his office as shall be prescribed by the board of directors.

SEC. 4. It shall be the duty of the secretary to keep a record
208 of the meetings of the board of directors and of the stockholders. He shall keep the book of blank certificates of stock, fill up and sign all the certificates issued, and make the corresponding entries on the margin of each book on such issues. He shall keep a proper transfer book and a stock ledger in debit and credit form, showing the number of shares issued to and transferred by any stockholder and the dates of such issuance and transfer, keep proper account books, and discharge such other duties as pertain to his office as may be prescribed by the board of directors, and if required by said board, shall also give such bond for the faithful performance of his duties as the board shall direct and approve, and he shall give notice to the stockholders of all annual and special meetings, as hereinafter provided.

ARTICLE IV.

The board of directors shall have power:

1. To call meetings of stockholders when they deem it necessary, giving not less than twenty days' notice thereof, in manner as hereinafter prescribed, and they shall call meetings of the stockholders at any time upon a written request for that purpose of persons representing one-third of all the capital stock of this company.

2. To make rules and regulations not inconsistent with the laws of the State of West Virginia and the by-laws of the company, for the guidance of the officers and management of the affairs of the company.

3. To declare dividends out of the surplus profits, whenever they shall deem it expedient, and as often as shall be for the best interest of all concerned, and the general interest of the company, and
209 to do such other acts and things, not inconsistent with the laws of the State and these by-laws, as shall be for the best interest of the company.

4. To audit and settle the accounts of the treasurer, secretary, and the general manager, and all claims which may be a legitimate charge against the company, and direct the manner of their payment—not inconsistent, however, with the legitimate powers and duties belonging to said board.

ARTICLE V.

It shall be the duty of the board of directors:

1. To cause to be kept a complete record of all their meetings and acts, and also of the proceedings of the meetings of the stockholders; and to present a full statement at the regular annual meeting of the stockholders, showing in detail the assets and liabilities of the com-

pany and generally the condition of its affairs, and shall exhibit a full report at each annual meeting of the stockholders of the affairs and conditions of the mines and property of the company for the last year. A similar statement shall be presented by them at any other meeting of the stockholders when thereto required by persons representing at least one-third the capital stock of the company.

2. To supervise all the acts of the officers and employees of the company, require the secretary and treasurer to keep full and accurate books and accounts, and to prescribe the form and mode of keeping such books, and require them severally to render a full and accurate account in writing to said board of all their doings at the end of each fiscal year.

210 3. To call them to account, settle with and discharge them, or either of them, when in the judgment of said board they, or either of them, are delinquent in duty.

4. To cause the official bond of the secretary and treasurer and general manager to be prosecuted when the same shall have been broken or violated.

5. To cause to be issued to the stockholders, in proportion to their several interest, certificates of stock, not to exceed in the aggregate the capital stock of the company.

6. To cause the moneys of the company to be safely kept, directing from time to time where they shall be kept or deposited.

ARTICLE VI.

A general manager shall be appointed by the board of directors, and be removable at their pleasure.

It shall be his duty:

1. To take charge of all the mines and property belonging to the company, to purchase all the material to be used in or about the mines, employ all the laborers, and to control and direct the labor and business pertaining to the interests, objects, and operations of the company, at the mines, subject to the direction and control of the board of directors of the company. The general manager shall also take charge of the amalgam, and turn the same into bullion, and keep a full and accurate account thereof, and of what has been used by him in carrying on the works, and include the same in his monthly report, whenever he shall have any on hand or turned into bullion.

211 2. To make monthly, and, when required, more frequent reports or returns to the president of the company of all persons hired or employed at the mines or works, and a statement of all expenditures of whatever kind, accompanying the same with the necessary vouchers, and a full statement of ore extracted or taken from the mines, and the disposition of the same, and report upon the general condition of the mine and works. A copy of such monthly reports to be sent by him to the secretary of the company, and by him kept in his office ready to be at all times inspected by any stockholder of the company.

3. To disburse and pay out all moneys that may from time to time be forwarded or delivered to him by the secretary or treasurer,

which has been raised or provided, by sale of stock, bonds, or otherwise, and to be used on or at the mines of the company, and in carrying on the works of the company, and shall give such bond as the directors shall demand.

4. To make a requisition upon the board of directors for necessary funds when the exigencies and interests of the company shall require it, stating the precise object or objects in itemized detail for which they are required, and if approved by the board, the money to be transmitted to him in such mode as they may direct. But the general manager shall not have the power to sign notes or contracts for the company, nor shall he have the power to incur any indebtedness unless so expressly authorized by the board of directors, and his compensation to be fixed by the board.

212 ARTICLE VII.

The members of the board of directors shall receive no compensation for their services as such, nor shall the company be held liable for any services rendered by any member of said board, except it shall be so expressly provided by the stockholders of the company at the annual meeting of the stockholders, or a special meeting duly convened, by a two-thirds vote of all the capital stock represented. The members of the board shall be allowed their reasonable traveling expenses, when actually engaged in the business of the company, or in attending any annual or special meeting of the stockholders, to be audited and allowed as in other cases of demands against the company.

Nothing herein, however, shall prevent any member being employed by the company or its directors to do special work or render special service for the company, and be paid therefor not to exceed a fair and just compensation.

The secretary shall receive such compensation for his services as the board of directors shall determine.

ARTICLE VIII.

No contract made by any member of the board of directors or officer of the company shall be valid or binding upon the company without the previous authorization of the board, or a subsequent ratification thereof. Nor shall any employé of the company trade or receive any commissions in or for material furnished.

213 ARTICLE IX.

SEC. 1. The regular annual meeting of the stockholders shall be held on the last Monday in June of each year, at the office of the company in the city of New York.

SEC. 2. A representation of a majority of the capital stock shall be necessary for the transaction of the business of all meetings of the stockholders. At such meeting a representation by proxy, duly appointed and in writing and filed with the secretary, shall be allowed, and each stockholder shall be entitled to one vote for each share of stock held by him, to be given by him in person or by proxy, and

any stockholder may hold and vote on such proxy. But no transfer of stock, after first publication of notice of an annual meeting of the stockholders, shall entitle the transferee to vote at such meeting of the stockholder.

SEC. 3. The annual meeting of the board of directors shall be held on the next day succeeding the annual meeting of the stockholders. Special meetings of the board may be called by the president whenever he may deem it expedient. A majority of the board of directors shall constitute a quorum for the transaction of business, but less than a quorum may adjourn any regular called meeting from time to time, and the "yeas" and "nays" shall be taken and recorded on every question when demanded by any member of the board.

SEC. 4. All meetings of stockholders shall be called by a notice, published by the secretary, at least twice a week in a daily or once a week in a weekly newspaper in the city of New York, for
214 three weeks prior to such meeting. And the secretary shall give notice personally or by letter of all meetings of the stockholders to each member, addressed to him at his usual post-office address, by mail, posted at least twenty days previous thereto, when such address is known or can be ascertained, stating the time and place of such meeting.

SEC. 5. The fiscal year of the company shall end on the twenty-third day of June of each year.

ARTICLE X.

Certificate of stock shall be of such form and device as the board of directors may direct, and such certificates shall be signed by the president and secretary, and express on their face the number, date of issue, number of shares for which and the person to whom issued. Several certificates may be issued to the same person or persons, provided that in the aggregate they do not exceed the number of shares belonging to such person or persons. The certificate book shall contain a margin on which shall be entered the number of shares and the name or names of the person or persons expressed in the corresponding certificates.

ARTICLE XI.

Shares of stock of the company may be transferred at any time by the holders thereof, or by attorney legally appointed, or by legal representatives, but no transfer of stock shall be valid except as between the parties thereto, so as to entitle the holder thereof to vote at any annual or special meeting of the board of directors or of the stockholders, until entered in proper form on the books of the company.

215 The surrendered certificate shall be cancelled before a new certificate shall be issued in lieu thereof. The cancellation of such stock certificate shall be caused or done by the secretary by punching the names of the president and secretary by a diamond-shaped punch.

The receiver of such a new certificate, and all persons holding or

owning shares of the stock of the company, shall be deemed to have signified his or her assent to the by-laws of the company.

ARTICLE XII.

SEC. 1. These by-laws may be altered or amended at any annual meeting of the stockholders of the company by a vote of two-thirds of all the stock represented at such meeting.

SEC. 2. These by-laws shall be printed in pamphlet form, and copies thereof be kept in the office of the company, and always remain ready for inspection at all business hours by all persons dealing with the company, and by all the stockholders thereof.

SEC. 3. The books and papers in the office of the treasurer and secretary shall at all times during office hours be open to the inspection of the board of directors, and any stockholder of the company.

SEC. 4. The office of the company shall be the office or room of the secretary, which at present is No. 60 Broadway, New York.

216 ARTICLE XIII.

The corporate seal of the company shall be kept by the secretary, and shall be of the following device, to wit:

Gold Hill Mining Company—engraved on the outer circle thereof, and in the center the letters and figures as follows, viz:

Incorporated June 23, 1890.

ARTICLE XIV.

The regular business of the board of directors shall be as follows, viz: 1. Call of the roll. 2. Reading of the minutes and correcting the same. 3. Reports and communications from the general officers of the company. 4. Reports of committees. 5. Motions, resolutions, and notices. 6. Miscellaneous business. 7. Settling and auditing the accounts of the secretary, treasurer, general manager, and all claims against the company. 8. Unfinished business.

At a regular meeting of the board of directors of the Gold Hill Mining Company, held at its office in the city of New York, on the 10th day of July, A. D. 1890, the following resolution was adopted by said board, to wit:

Resolved, That the foregoing and within by-laws, with the statement therein in reference to the property of said company, be, and the same are, the by-laws of the Gold Hill Mining Company and a brief description of its property, and by a like resolution said company has caused its corporate seal to be hereunto affixed and
217 these presents to be signed by its president and secretary, this 10th day of July, A. D. 1890.

[L. S.] M. J. SHOECRAFT, *President.*
CALVIN LITTLEFIELD, *Secretary.*

STATE OF NEW YORK, }
City and County of New York, } ss:

On this — day of July, A. D. 1890, before me personally came M. J. Shoecraft and Calvin Littlefield, to me known, who being by

me duly sworn each for himself, did depose and say that the said M. J. Shoecraft is the president and that the said Calvin Littlefield is the secretary of the Gold Hill Mining Company, the corporation which is described in the foregoing by-laws and which, by the aforesaid resolutions, adopted said by-laws for the by-laws of said company, and that the seal affixed to said by-laws is the corporate seal of said company and was thereto affixed by order of the board of directors of said company, and that they respectively signed their names thereto by like authority.

(Endorsed:) Filed Dec. 14, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

218 United States Circuit Court, Northern District of California.

WILLIAMS
vs.
GOLD HILL M. Co. } No. 12531.

DEFENDANT'S GENERAL EXHIBIT No. 2.

This indenture, made the twenty-fourth day of June, in the year of our Lord one thousand eight hundred and ninety, between the Citizens' Bank, a corporation organized and existing under the laws of the State of California, party of the first part, and the Gold Hill Mining Company, a corporation organized and existing under the laws of the State of West Virginia, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of twenty-two thousand six hundred dollars, in gold coin of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said party of the second part, and to its successors and assigns forever, all and singular that certain quartz mining claim known as the Nevada City quartz mine, situate near Nevada City, in the county of Nevada, State of California, and particularly described as follows:

First. That certain portion of township sixteen (16) north,
219 of range eight (8) east, Mt. Diablo meridian, and in the Nevada mining district, designated in the office of the United States surveyor general for California as lot No. 85, containing four and fifty-three one-hundredths (4.53) acres of land, more or less, and embracing one thousand (1,000) linear feet of the Schmidt quartz lode, being the land and mine patented to John J. Schmidt, Jr., said patent dated September 28, 1880, and recorded in Book 1 of Patents, pages 666-'7-'8-'9-670-'71, records of Nevada county, California, to which patent and the record thereof reference is hereby made for a more full description.

Second. That certain other parcel of mining ground known as the Nevada City Extension gold quartz lode, situate in Nevada mining district, in said county and State, embracing a portion of sections

two (2) and eleven (11) in township sixteen (16) north, range eight (8) east, Mt. Diablo meridian, containing fourteen and seventy-three one-hundredths (14.73) acres of land, more or less, and embracing fourteen hundred and ninety-nine and five-tenths (1,499.5) linear feet of the said Nevada City Extension quartz lode.

Said ground being the claims patented by the Government of the United States to the Nevada City Gold Quartz Mining Company on the fifteenth day of March, 1883, which patent was duly recorded in the office of the county recorder of Nevada county, Cal., in Book 2 of Patents, pages 25–'6–'7–'8–'9 & 30, records of Nevada county, to which patent and the records thereof reference is hereby made for a more particular description.

Third. That certain portion of the Lutje & Schwartz placer mine, commencing at the northeast corner of said placer mine, and
220 extending thence south on the east line of said mine to a point fifty (50) feet north of the main flume in Wood's ravine; thence running due west to the west line of said placer mine; thence north on the west line of said placer mine to the northwest corner thereof; thence east on the north line of said placer mine to the place of beginning, containing fifteen (15) acres, more or less. Said Leuje & Schwartz placer mine is covered by a patent from the United States, which patent is of record in the office of the county recorder of Nevada county, in Book 41 of Deeds, pages 506–'7; to which patent and record reference is hereby made.

Together with all quartz mills, hoisting works and machinery of every kind, and all iron pipe, cuts, tunnels, rights of way, privileges, easements, and improvements to said mine belonging or used in connection therewith, or with any part thereof.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever.

This conveyance is made, however, subject to the lien of all taxes accrued since first day in March, 1890.

221 In witness whereof the said party of the first part has caused these presents to be executed in its corporate name the day and year above written.

[CORPORATE SEAL.] CITIZENS' BANK.
E. M. PRESTON, *President.* [SEAL.]

Attest: D. E. MORGAN, *Secretary.* [SEAL.]

STATE OF CALIFORNIA, }
County of Nevada, } ss:

On this twenty-fourth day of June, A. D. 1890, before me, Fred Searls, a notary public, in and for the county of Nevada, State of California, personally appeared E. M. Preston, president, and D. E. Morgan, secretary, known to me to be the president and secretary

respectively of the Citizens' bank, the corporation that executed the within instrument, who acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at office in Nevada City, the day and year last above written.

FRED SEARLS,
[SEAL.] *Notary Public for Nevada County.*

Recorded at request of B. N. Shoecraft June 24, 1890, at 31 minutes past 11 o'clock, a. m., in Book 74 of Deeds, pages 628 *et seq.*
A. B. BRADY, *Recorder.*

222 STATE OF CALIFORNIA, } *ss:*
County of Nevada, }

I, Jno. Werry, county recorder in and for the county of Nevada, State of California, do hereby certify that I have compared the foregoing and find the *the* same to be a full, true, and correct copy of deed on record in Book 74 of Deeds, page 628, in this, my office.

Witness my hand and official seal, this twelfth day of December, A. D. 1898.

JNO. WERRY,
[SEAL.] *County Recorder, Nevada County, Cal.*

[Ten-cent revenue stamp.]

(Endorsed:) Filed Dec. 14, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

223 United States Circuit Court, Northern District of California.

WILLIAMS
vs.
GOLD HILL M'G CO., Defendants. } No. 12531.

DEFENDANTS' EXHIBIT GAYLORD NO. 1.

Judgment-roll.

In the Superior Court of the County of Nevada, State of California.

GEORGE C. GAYLORD, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant. } No. 2501.

Notice of Default.

In this action the defendant Gold Hill Mining Company (a corporation), having been served with process by summons and copy of complaint, as appears by the papers on file, and having failed to appear and answer the complaint herein, and the legal day for answering having expired, the default of said defendant in the premises is hereby entered.

224 Attest my hand and seal of said court this thirteenth day of June, A. D. 1896.

[SEAL.] J. J. GREANY, *Clerk*,
By J. C. NILON, *Deputy*.

In the Superior Court of Nevada County, State of California.

GEORGE C. GAYLORD, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant.

Complaint.

The plaintiff complains and alleges:

I.

That during all the times herein mentioned said defendant was, and is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been, and now is engaged in conducting mining operations within the *the* county of Nevada, said State of California.

II.

That said defendant is justly indebted to plaintiff in the sum of six hundred and thirty-one dollars and fifteen cents, on
225 account of goods, wares, and merchandise sold and delivered by plaintiff to defendant, at the special instance and request of defendant, and within the period of two years preceding the commencement of this action.

III.

That said defendant has not paid the same nor any part thereof.

For a second cause of action, plaintiff alleges:

I.

That during all the times herein mentioned, said defendant was, and is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been, and now is, engaged in conducting mining operations within the county of Nevada, said State of California.

II.

That on, to wit, May 28, 1896, said defendant was indebted to Thomas Mounter in the sum of two hundred and eighty dollars, as a balance due on account of work and labor performed by said Thomas Mounter, for said defendant, at the special instance and request of said defendant, within eighteen months preceding the commencement of this action.

III.

That defendant has not paid the same nor any part thereof.

IV.

That, prior to the commencement of this action, said Thomas Mounter duly assigned his claim against said defendant to this plaintiff.

226 For a third cause of action, plaintiff alleges:

I.

That during all the times herein mentioned, said defendant was and is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been and now is engaged in conducting mining operations within the county of Nevada, said State of California.

II.

That on, to wit, May 28, 1896, said defendant was indebted to William Jeffery in the sum of one hundred and sixty-nine dollars and sixty-five cents, as a balance due on account of work and labor performed by said William Jeffery, for said defendant, at the special instance and request of said defendant, within eighteen months preceding the commencement of this action.

III.

That defendant has not paid the same, nor any part thereof.

IV.

That, prior to the commencement of this action, said William Jeffery duly assigned his claim against said defendant to this plaintiff.

For a fourth cause of action against said defendant, plaintiff alleges:

I.

227 That during all the times herein mentioned, said defendant was and is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been and now is engaged in conducting mining operations within the county of Nevada, said State of California.

II.

That on to wit, May 28, said defendant was indebted to George K. Danforth in the sum of two hundred and forty-four dollars and eighty-four cents, as a balance due on account of work and labor performed by said George K. Danforth, for said defendant, at the special instance and request of said defendant, within eighteen months preceding the commencement of this action.

III.

That the defendant has not paid the same, nor any part thereof.

IV.

That, prior to the commencement of this action, said Geerge K. Danforth duly assigned his claim against said defendant to this plaintiff.

For a fifth cause of action against said defendant, plaintiff alleges:

I.

That, during all the times herein mentioned, said defendant was and is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been, and now is, engaged in conducting mining operations within the county of Nevada, said State of California.

228 II.

That on, to wit, May 28, 1896, said defendant was indebted to Abel Delbridge, in the sum of one hundred and fifty-eight dollars, as a balance due on account of work and labor performed by said Abel Delbridge, for said defendant, at the special instance and request of said defendant within eighteen months preceding the commencement of this action.

III.

That said defendant has not paid the same, nor any part thereof.

IV.

That, prior to the commencement of this action, said Abel Delbridge duly assigned his claim against said defendant to this plaintiff.

For a sixth cause of action against said defendant, plaintiff alleges.

I.

That during all the times herein mentioned said defendant was and is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been, and now is, engaged in conducting mining operations within the county of Nevada, said State of California.

II.

That on, to wit, May 28, A. D. 1896, said defendant was indebted to Peter Menares in the sum of one hundred and twenty-two dollars and twenty-nine cents, as a balance due on account of
229 work and labor performed by said Peter Menares, for said defendant, at the special instance and request of said defendant, within eighteen months preceding the commencement of this action.

III.

That said defendant has not paid the same, nor any part thereof.

IV.

That, prior to the commencement of this action, said Peter Menares duly assigned his claim against said defendant to this plaintiff.

For a seventh cause of action against said defendant, plaintiff alleges:

I.

That during all the times herein mentioned, said defendant was and is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been, and now is, engaged in conducting mining operations within the county of Nevada, said State of California.

II.

That on, to wit, May 28, A. D. 1896, said defendant was indebted to David Shearer in the sum of one hundred and ten dollars and sixty-four cents, as a balance due on account of work and labor performed by said David Shearer, for said defendant, at the special instance and request of said defendant, within eighteen months preceding the commencement of this action.

230

III.

That said defendent has not paid the same, nor any part thereof.

IV.

That, prior to the commencement of this action, said David Shearer duly assigned his claim against said defendant to this plaintiff.

For an eighth cause of action against said defendant, plaintiff alleges:

I.

That during all the times herein mentioned, said defendant was and is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been, and now is, engaged in conducting mining operations within the county of Nevada, State of California.

II.

That on, to wit, May 28, 1896, A. D., said defendant was indebted to Charles Dougherty in the sum of one hundred and twenty-five dollars and thirty cents, as a balance due on account of work and labor performed by said Charles Dougherty, for said defendant, at the special instance and request of said defendant, within eighteen months preceding the commencement of this action.

III.

That defendant has not paid the same, nor any part thereof.

231 IV.

That, prior to the commencement of this action, said Charles Dougherty duly assigned his claim against said defendant to this plaintiff.

For a ninth cause of action against said defendant, plaintiff alleges:

I.

That during all the times herein mentioned, said defendant was and is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been, and now is, engaged in conducting mining operations within the county of Nevada, said State of California.

II.

That on, to wit, May 28, 1896, said defendant was indebted to L. C. Garwood in the sum of two hundred and thirteen dollars, as a balance due on account of work and labor performed by said L. C. Garwood for said defendant, at the special instance and request of said defendant, within eighteen months preceding the commencement of this action.

III.

That said defendant has not paid the same, nor any part thereof.

IV.

That, prior to the commencement of this action, said L. C. Garwood duly assigned his claim against said defendant to this plaintiff.

232 For a tenth cause of action, against said defendant, plaintiff alleges:

I.

That, during all the times herein mentioned, said defendant was and is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been, and now is, engaged in conducting mining operations within the county of Nevada, said State of California.

II.

That on, to wit, May 28, 1896, said defendant was indebted to Ed. Harry, Jr., in the sum of one hundred and forty-two dollars and fifty cents as a balance due on account of work and labor performed by said Ed Harry, Jr., for said defendant, at the special instance and request of said defendant, within eighteen months preceding the commencement of this action.

III.

That said defendant has not paid the same, nor any part thereof

IV.

That, prior to the commencement of this action, said Ed. Harry, Jr., duly assigned his claim against said defendant to this plaintiff.

For an eleventh cause of action against said defendant, plaintiff alleges:

I.

That during all the times herein mentioned, said defendant
233 was, and is, a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been, and now is, engaged in conducting mining operations within the county of Nevada, said State of California.

II.

That on, to wit, May 28, 1896, said defendant was indebted to Benjamin Thomas in the sum of one hundred and forty-six dollars and thirty-eight cents as a balance due on account of work and labor performed by said Benjamin Thomas, for said defendant, at the special instance and request of said defendant, within eighteen months preceding the commencement of this action.

III.

That defendant has not paid the same, nor any part thereof.

IV.

That prior to the commencement of this action, said Benjamin Thomas duly assigned his claim against said defendant to this plaintiff.

For a twelfth cause of action against said defendant, plaintiff alleges:

I.

That, during all times herein mentioned, said defendant was, and is, a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been, and now is, engaged in conducting mining operations within the county of Nevada, said State of California.

234 II.

That on, to wit, May 28, 1896, said defendant was indebted to Wm. M. Browning in the sum of one hundred dollars and ninety-seven cents, as a balance due on account of work and labor performed by said William M. Browning for said defendant, at the special instance and request of said defendant, and within eighteen months preceding the commencement of this action.

III.

That defendant has not paid the same, nor any part thereof.

IV.

That prior to the commencement of this action, said William M. Browning duly assigned his claim against said defendant to this plaintiff.

For a thirteenth cause of action against said defendant plaintiff alleges:

I.

That, during all the times herein mentioned, said defendant was, and is, a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been, and now is, engaged in conducting mining operations in the county of Nevada, State of California.

II.

That on, to wit, May 28, 1896, A. D., said defendant was indebted to Legg & Shaw Company (a corporation) in the sum of one hundred and twenty-three dollars and fifty-two cents, as a balance
235 due on account of goods, wares and merchandise sold and delivered to said defendant at the special instance and request of said defendant, within two years preceding the commencement of this action.

III.

That said Legg & Shaw Company is a corporation duly organized and existing under and by virtue of the laws of the State of California.

IV.

That said defendant has not paid the above claim, nor any part thereof.

V.

That, prior to the commencement of this action, said Legg & Shaw Company (a corporation) duly assigned its claim against said defendant to this plaintiff.

For a fourteenth cause of action against said defendant plaintiff alleges:

I.

That, during all the times herein mentioned, said defendant was, and is, a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been, and now is, engaged in conducting mining operations within the county of Nevada, said State of California.

II.

That on, to wit, June 1, A. D. 1896, said defendant was indebted to B. N. Shoecraft in the sum of eight thousand nine hundred and ninety-seven dollars and ninety-two cents, balance due on account

of money loaned to said corporation, and on account of ser-
236 vices rendered and labor performed for said defendant, at the special instance and request of said defendant.

III.

That said defendant has not paid the same, nor any part thereof.

IV.

That, prior to the commencement of this action, said B. N. Shoecraft duly assigned his claim against said defendant to this plaintiff.

For a fifteenth cause of action against said defendant plaintiff alleges:

I.

That, during all the times herein mentioned, said defendant was and is, a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been, and now is, engaged in conducting mining operations within the county of Nevada, said State of California.

II.

That on, to wit, June 1, 1896, A. D., said defendant was indebted to L. J. Shoecraft in the sum of two hundred and twenty-three dollars as a balance due on account of work and labor performed by said L. J. Shoecraft, for said defendant, at the special instance and request of said defendant, and within eighteen months preceding the commencement of this action.

III.

That said defendant has not paid the same, nor any part thereof.

237 IV.

That prior to the commencement of this action, said L. J. Shoecraft duly assigned his claim against said defendant to this plaintiff.

For a sixteenth cause of action against said defendant, plaintiff alleges:

I.

That, during all the times herein mentioned, said defendant was, and is, a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been, and now is, engaged in conducting mining operations within the county of Nevada, said State of California.

II.

That on, to wit, May 28, 1896, said defendant was indebted to James H. Langman in the sum of one hundred and eighty-one dol-

lars, as a balance due on account of work and labor performed by said James H. Langman for said defendant at the special instance and request of said defendant, and within eighteen months prior to the commencement of this action.

III.

That said defendant has not paid the same, nor any part thereof.

IV.

That, prior to the commencement of this action, said James H. Langman duly assigned his claim against said defendant to
238 this plaintiff.

For a seventeenth cause of action against said defendant plaintiff alleges:

I.

That, during all the times herein mentioned, said defendant was, and is, a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been, and now is, engaged in conducting mining operations in the county of Nevada, said State of California.

II.

That on, to wit, June 2, A. D. 1896, said defendant was indebted to H. Dickerman in the sum of sixty-six dollars as a balance due on account of work and labor performed by said H. Dickerman for said defendant, at the special instance and request of said defendant, and within eighteen months prior to the commencement of this action.

III.

That said defendant has not paid the same, nor any part thereof.

IV.

That, prior to the commencement of this action, said H. Dickerman duly assigned his claim against said defendant to this plaintiff.

For an eighteenth cause of action against said defendant, plaintiff alleges:

I.

That, during all the times mentioned herein, said defendant was, and is, a corporation duly organized and existing under
239 and by virtue of the laws of the State of West Virginia, and during said period has been, and now is, engaged in conducting mining operations within the county of Nevada, said State of California.

II.

That on, to wit, June 1, A. D. 1896, said defendant was indebted to Charles E. Kent in the sum of one hundred and ten dollars and

ten cents as a balance due on account of work and labor performed by said Charles E. Kent for said defendant, at the special instance and request of said defendant, and within eighteen months preceding the commencement of this action.

III.

That defendant has not paid the same, nor any part thereof.

IV.

That, prior to the commencement of this action, said Charles E. Kent duly assigned his claim against said defendant to this plaintiff.

For a nineteenth cause of action against said defendant plaintiff alleges:

I.

That, during all the times herein mentioned, said defendant was, and is, a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been, and now is, engaged in conducting mining operations in the county of Nevada, said State of California.

240 II.

That on, to wit, June 2, 1896, said defendant was indebted to M. Garver in the sum of one hundred and twenty-nine dollars, as a balance due on account of work and labor performed by said M. Garver for said defendant, at the special instance and request of said defendant, and within eighteen months preceding the commencement of this action.

III.

That said defendant has not paid the same nor any part thereof.

IV.

That, prior to the commencement of this action, said M. Garver duly assigned his claim against said defendant to this plaintiff.

For a twentieth cause of action against said defendant plaintiff alleges:

I.

That, during all the times herein mentioned, said defendant was and is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and during said period has been and now is engaged in conducting mining operations in the county of Nevada, said State of California.

II.

That on, to wit, May 28, A. D. 1896, said defendant was indebted to John Campbell in the sum of one hundred and sixty-four dollars

as a balance due on account of work and labor performed by
241 said John Campbell for said defendant, at the special instance and request of said defendant, and within eighteen months prior to the commencement of this action.

III.

That said defendant has not paid the same nor any part thereof.

IV.

That prior to the commencement of this action, said John Campbell duly assigned his claim against said defendant to this plaintiff.

Wherefore, plaintiff demands judgment against said defendant for the sum of twelve thousand four hundred and thirty-nine dollars and twenty-*six* cents, and for costs of suit.

J. M. WALLING,
Attorney for Plaintiff.

STATE OF CALIFORNIA, } ss:
County of Nevada, }

George C. Gaylord, being first duly sworn according to law, deposes and says: I am the plaintiff above named. I have read the foregoing complaint and know the contents thereof, and that the same is true of my own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters I believe it to be true.

GEORGE C. GAYLORD.

Subscribed and sworn to before me this second day of June, A. D. 1896.

[SEAL.]

E. R. POWERS,
Notary Public in and for the County of Nevada, State of California.

242 (Endorsed:) No. 2501. In the superior court of Nevada county, State of California. George C. Gaylord, plaintiff, *vs.* Gold Hill Mining Company (a corporation), defendant. Complaint. Filed June 2, A. D. 1896. J. J. Greany, clerk, by J. C. Nilon, deputy. J. M. Walling, attorney for plaintiff.

In the Superior Court of the County of Nevada, State of California.

GEORGE C. GAYLORD, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant.

Summons.

Action brought in the superior court of the county of Nevada, State of California, and the complaint filed in said county of Nevada, in the office of the clerk of said superior court.

The people of the State of California send greeting to Gold Hill Mining Company (a corporation) defendant:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the superior court of the county of Nevada, State of California, and to answer the complaint
243 filed therein, within ten days (exclusive of the day of service) after the service on you of this summons—if served within this county; or, if served elsewhere, within thirty days, or judgment by default will be taken against you according to the prayer of said complaint.

The said action is brought to obtain judgment against you for the sum of twelve thousand four hundred thirty-nine dollars and twenty-six cents ($12,439.26), alleged to be due plaintiff from you on account of goods, wares and merchandise sold and delivered by plaintiff to you, and work and labor performed for you, at your special instance and request. Plaintiff also demands judgment for his costs of suit, as will more fully appear in the complaint on file herein, to which reference is hereby made.

And you are hereby notified that if you fail to appear and answer the said complaint as above required, the said plaintiff will take judgment against you for the said sum of twelve thousand four hundred and thirty-nine dollars and twenty-six cents and costs of suit.

Given under my hand and seal of the said superior court of the county of Nevada, State of California, this second day of June, in the year of our Lord one thousand eight hundred and ninety-six.

[SEAL.] J. J. GREANY, *Clerk*,
By J. C. NILON,
Deputy Clerk.

244 OFFICE OF THE SHERIFF, *County of Nevada*, } *ss:*

I hereby certify that I received the within summons on the second day of June, 1896, at — minutes past — o'clock — m., and personally served the same upon the within-named defendant Gold Hill Mining Co. (a corporation), by personally serving on B. N. Shoecraft, managing agent of said corporation, by delivering to and leaving with him, said defendant, personally, in the county of Nevada, on the second day of June, 1898, a true copy of said sum-

mons, attached to a true copy of the complaint in said action therein named.

Given under my hand at Nevada City, this second day of June, 1896.

D. F. DOUGLAS,
Sheriff Nevada County,
By JAS. G. NEAGLE,
Deputy Sheriff.

(Endorsed:) No. 2501. Superior court, county of Nevada. George C. Gaylord, plaintiff, *vs.* Gold Hill Mining Company (a corporation), defendant. Summons. Filed June 7, 1897. J. J. Greany, clerk. J. M. Walling, attorney for plaintiff.

No. 2501. In the superior court, State of California, county of Nevada. George C. Gaylord *vs.* Gold Hill Mining Co. (a corporation).

245 The clerk will enter default of defendant for failure to answer plaintiff's complaint within the time required by law, and enter judgment for the plaintiff.

Dated June 13, 1896.

J. M. WALLING,
Attorney for Plaintiff.

Filed June 13, 1896. J. J. Greany, clerk, by J. C. Nilon, deputy clerk.

In the Superior Court of the County of Nevada, State of California.

GEORGE C. GAYLORD, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant.

Default Judgment.

In this action the defendant, Gold Hill Mining Company (a corporation), having been regularly served with process, and having failed to appear and answer the plaintiff's complaint filed herein, and the legal time for answerering having expired, and the default of the said defendant in the premises having been duly entered according to law;

Now, at this day, on application of J. M. Walling, Esq., attorney for said plaintiff, George C. Gaylord, ordered that judgment

246 be entered herein against the said defendant, Gold Hill Mining Company (a corporation), in accordance with the prayer of said plaintiff's complaint, on file herein.

Wherefore, by reason of the law and the premises aforesaid, it is ordered, adjudged and decreed that George C. Gaylord, plaintiff, do have and recover of and from said defendant, Gold Hill Mining Company (a corporation), the sum of twelve thousand four hundred thirty-nine and twenty-six one-hundredths dollars, together with said plaintiff's costs and disbursements incurred in said action,

amounting to the sum of eight dollars, with interest thereon, at the rate of seven per cent. per annum from date hereof till paid.

Dated Dec. 4, 1896.

J. J. GREANY,
County Clerk.

(Endorsed:) No. 2501. Superior court, county of Nevada. George C. Gaylord, plaintiff, against Gold Hill Mining Company (a corporation), defendant. Judgment by default. Filed December 4, 1896. J. J. Greany, clerk. Entered in Judgment Book 3, page 298.

247 In the Superior Court in and for the County of Nevada, State of California.

GEORGE C. GAYLORD, Plaintiff,
vs.
GOLD HILL MINING CO., Defendant.

Clerk's Certificate to Judgment-roll.

I, the undersigned, county clerk of the county of Nevada, State of California, and *ex officio* clerk of the superior court, in and for said Nevada county, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled action, and recorded in Judgment Book 3 of said court, at page 298. And I further certify that the foregoing papers hereto annexed constitute the judgment-roll in said action.

Witness my hand and the seal of said court this fourth day of December, 1896.

[SEAL.]

J. J GREANY, *Clerk*,
By J. C. NILON,
Deputy Clerk.

(Endorsed:) No. 2501. Superior court, county of Nevada. George G. Gaylord, plaintiff, *vs.* Gold Hill Mining Co., defendant. Judgment-roll. Filed Dec. 4, 1896. J. J. Greany, clerk, by J. C. Nilon, deputy clerk.

248 Real Estate.

Return on Execution.

STATE OF CALIFORNIA, } ss:
County of Nevada, }

I, D. B. Getchell, sheriff of the county of Nevada, *is* hereby certify that under and by virtue of the within and hereunto-annexed writ of execution, by me received on the seventh day of October, A. D. 1897, I did on the seventh day of October, A. D. 1897, levy upon the lands hereinafter described, and noticed the same for sale, as the law directs (by posting written notices of the time and place of sale, particularly describing the property, for twenty-three days successively, in three public places of the township or city where said property is situated and also, where said property was to be sold, and

publishing a copy thereof once a week for the same period in the "Evening Herald," a daily newspaper published in the county of Nevada), and on Saturday, the thirtieth day of October, A. D. 1897, at twelve o'clock m. of said day, in front of the court-house door, of said county, the time and place fixed for said sale, I did attend and offered for sale at public auction for United States gold coin, the property described, to wit:

Being commonly known as the "Nevada City and Nevada City Extension quartz mines," and being designated, according to the United States system of mineral land surveys, as mineral lot 85 of section eleven, township 16 north, of range 8 east, M. D. M., and lot
249 No. 101 of sections 2 and 11, township sixteen north, range eight east, M. D. M., and also all surface ground in connection therewith, together with all hoisting works, mills, machinery and mining appliances and appurtenances thereunto belonging. Also that portion of mineral lot No. 49 of section 11, township sixteen north, of range eight east, M. D. M., commencing at the northeast corner of said lot 49; thence running south to a point fifty feet north of Gentry's flume; thence due west to the west line of said lot; thence north to the northwest corner of said lot No. 49, and thence east to the place of beginning.

And sold the whole of the same to George C. Gaylord for the sum of thirteen thousand three hundred thirty-one and eighty-two one-hundredths ($13,331.82) dollars, in United States gold coin, said Geo. C. Gaylord being the highest bidder and said sum being the highest bid for the same; and I have given said purchaser, Geo. C. Gaylord, a certificate of said sale, and have filed a duplicate thereof for record with the recorder of said county of Nevada, and I herewith return said writ, judgment satisfied.

And I further certify that I have deducted from the said sum of thirteen thousand three hundred and thirty-one dollars and eighty-two cents my fees, commissions and expenses, amounting to the sum of seventy-five dollars and fifty-five cents, leaving a net balance of thirteen thousand two hundred and fifty-six dollars and twenty-seven cents, which I have paid to plaintiff's attorney, whose receipt therefor is hereto attached.

250 Dated at Nevada City, this thirtieth day of October, 1897.

Nevada City, October 30, 1897.

D. B. GETCHELL, *Sheriff*,
By J. A. PASCOE,
Deputy Sheriff.

Received from D. B. Getchell, sheriff of Nevada county, State of California, the sum of thirteen thousand two hundred fifty-six and twenty-seven one-hundredths dollars, proceeds of sale made this day on execution in case No. 2501 in the superior court, county of Nevada, State of California, Geo. C. Gaylord *vs.* Gold Hill Mining Co. (a corporation). No cash was actually received, but this receipt is given to show a release of said sheriff.

Dated October 30, 1897.

J. M. WALLING,
Attorneys for Plaintiff.

Writ of Execution.

In the Superior Court of the State of California in and for the County of Nevada.

The people of the State of California to the sheriff of the county of Nevada, Greeting:

Whereas, on the fourth day of December, 1896, George C. Gaylord recovered a judgment in the superior court of the State of California, in and for the county of Nevada, against Gold Hill Mining Company (a corporation) for the sum of twelve thousand four
251 hundred thirty-nine and twenty-six one-hundredths dollars, with interest thereon at the rate of seven per cent. per annum till paid, from the date of said judgment, together with eight ($8.00) dollars costs and disbursements, at the date of said judgment, and accruing costs one dollar, as appears to us of record.

And whereas, the judgment-roll in the action in which said judgment was entered is filed in the clerk's office of said court, and the said judgment was docketed in said clerk's office, on the day and year first above written.

And the sum of twelve thousand four hundred and thirty-nine dollars and twenty-six cents, with interest thereon at the rate of seven per cent. per annum from December 4, 1896, and the sum of eight dollars, costs of suit, is now (at the date of this writ) actually due on said judgment.

Now, you, the said sheriff, are hereby required to make the said sums due on the said judgment, with interest as aforesaid, and costs and accruing costs, to satisfy the said judgment out of the personal property of said debtor, or, if sufficient personal property of said debtor cannot be found, then out of the real property in your county, belonging to it on the day whereon said judgment was docketed in the said county, or any time thereafter; and make return of this writ, within sixty days after your receipt hereof, with what you have done endorsed thereon.

Witness, Hon. F. T. Nilon, judge of the said superior court of the State of California, in and for the county of Nevada, at the courthouse in said county, this second day of October, 1897.

252 Attest my hand and the seal of said court, the day and year last above written.

[SEAL.] J. J. GREANY, *Clerk.*

(Endorsed:) No. 2501. Superior court, county of Nevada. George C. Gaylord, plaintiff, *vs.* Gold Hill Mining Company (a corporation), defendant. Execution. Filed on return this second day of December, A. D. 1897. J. J. Greany, clerk, by J. C. Nilon, deputy clerk. J. M. Walling, attorney for plaintiff.

[Ten-cent revenue stamp.]

STATE OF CALIFORNIA, } ss:
County of Nevada, }

Clerk's Certificate to Original Papers.

I, J. J. Greany, county clerk and *ex officio* clerk of the superior court, in and for said county of Nevada, State of California, do hereby certify that I have compared the foregoing with the original, and find the same to be a full, true and correct copy of the original judgment-roll and execution and return on same in case of Geo. C. Gaylord *vs.* Gold Hill M'g Co. (a corporation) on file in this, my office.

Witness my hand and the seal of said superior court, this tenth day of December, A. D. 1898.

[Seal of Court.]

J. J. GREANY, *Clerk.*

(Endorsed:) Filed Dec. 14, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

253 United States Circuit Court, Northern District of California.

WILLIAMS *vs.* GOLD HILL M'G CO. } No. 12531.

DEFENDANT'S EXHIBIT GAYLORD No. 2.

Judgment-roll.

In the Superior Court of the County of Nevada, State of California.

GEORGE C. GAYLORD, Plaintiff, *vs.* GOLD HILL MINING COMPANY (a Corporation), Defendant. } 2690.

Default.

In this action the defendant, Gold Hill Mining Company (a corporation) having been served with process by summons and copy of complaint as appears by the papers on file, and having failed to appear and answer the complaint herein, and the legal day for answering having expired, the default of said defendant in the premises is hereby entered.

254 Attest my hand and seal of said court this twenty-ninth day of October, A. D. 1897.

[SEAL.]

J. J. GREANY, *Clerk,*
By J. C. NILON, *Deputy.*

In the Superior Court of Nevada County, State of California.

GEORGE C. GAYLORD, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), *Defendant.*

Complaint.

Now, by attorney, comes the above-named plaintiff, and complaining of said defendant, and for cause of action alleges:

I.

That said defendant is a corporation duly organized, and existing under and by virtue of the laws of the State of West Virginia, and is engaged in the business of conducting mining and milling operations within the State of California and county of Nevada.

II.

That said defendant was indebted to W. O. Bean for labor
255 and services performed as a miner for said defendant, at the special instance and request of said defendant, within two years last past, in the sum of sixty dollars.

III.

That no part of the same has been paid.

IV.

That, prior to the commencement of this action, and on, to wit, February 1, 1896, said W. O. Bean, for valuable consideration, duly assigned his said claim to this plaintiff.

For a second cause of action against said defendant plaintiff alleges:

I.

That said defendant is a corporation duly organized, and existing under and by virtue of the laws of the State of West Virginia, and is engaged in the business of conducting mining and milling operations within the State of California and county of Nevada.

II.

That said defendant was indebted to John P. Gilbert for labor and services performed as a miner for said defendant, at the special instance and request of said defendant, within two years last past, in the sum of twenty-seven dollars.

III.

That no part of the same has been paid.

IV.

That, prior to the commencement of this action, and on, to
256 wit, October 1, 1897, said John P. Gilbert, for a valuable consideration, duly assigned his said claim to this plaintiff.

For a third cause of action against said defendant said plaintiff alleges:

I.

That said defendant is a corporation duly organized, and existing under and by virtue of the laws of the State of West Virginia, and is engaged in the business of conducting mining and milling operations within the State of California and county of Nevada.

II.

That said defendant was indebted to Thomas Reynolds for labor and services performed as a miner for said defendant, at the special instance and request of said defendant, within two years last past, in the sum of one hundred and ninety dollars and twenty-five cents.

III.

That no part of the same has been paid.

IV.

That, prior to the commencement of this action, and on, to wit, October 11, 1897, said Thomas Reynolds, for a valuable consideration, duly assigned his said claim to this plaintiff.

For a fourth cause of action against said defendant, plaintiff alleges:

I.

That said defendant is a corporation duly organized, and
257 existing under and by virtue of the laws of the State of West Virginia, and is engaged in the business of conducting mining and milling operations within the State of California and county of Nevada.

II.

That said defendant was indebted to James Molloy for labor and services performed as a minor for said defendant, at the special instance and request of said defendant, within two years last past, in the sum of three hundred and twenty-nine dollars.

III.

That no part of the same has been paid.

IV.

That, prior to the commencement of this action, and on, to wit, October 1, 1897, said James Molloy, for a valuable consideration, duly assigned his said claim to this plaintiff.

For a fifth cause of action against said defendant, plaintiff alleges:

I.

That said defendant is a corporetion duly organized, and existing under and by virtue of the laws of the State of West Virginia, and is engaged in the business of conducting mining and milling operations within the State of California and county of Nevada.

II.

That said defendant was indebted to Frederick Reynolds, for labor and services performed as a miner for said defendant,
258 at the special instances and request of said defendant, within two years last past, in the sum of twenty-six dollars and eighty-five cents.

III.

That no part of the same has been paid.

IV.

That, prior to the commencement of this action, and on, to wit, October 11, 1897, said Frederick Reynolds, for a valuable consideration, duly assigned his said claim to this plaintiff.

For a sixth cause of action against said defendant, plaintiff alleges:

I.

That said defendant is a corporation duly organized, and existing under and by virtue of the laws of the State of West Virginia, and is engaged in the business of conducting mining and milling operations within the State of California and county of Nevada.

II.

That said defendant was indebted to John Conley, for labor and services performed as a miner for said defendant, at the special instance and request of said defendant, within two years last past, in the sum of twenty-six dollars and sixty cents.

III.

That no part of the same has been paid.

IV.

That, prior to the commencement of this action, and on, to
259 wit, October 1, 1897, said John Conley, for a valuable consideration, duly assigned his said claim to this plaintiff.

For a seventh cause of action against said defendant, plaintiff alleges:

I.

That said defendant is a corporation duly organized, and existing under and by virtue of the laws of the State of West Virginia, and

is engaged in the business of conducting mining and milling operations within the State of California and county of Nevada.

II.

That said defendant was indebted to S. J. Erskine for labor and services performed as a miner for said defendant, at the special instance and request of said defendant, within two years last past, in the sum of twenty-two dollars and fifty cents.

III.

That no part of the same has been paid.

IV.

That, prior to the commencement of this action, and on, to wit, October 11, 1897, said S. J. Erskine, for a valuable consideration, duly assigned his said claim to this plaintiff.

For an eighth cause of action against said defendant, plaintiff alleges:

I.

That said defendant is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia,
260 and is engaged in the business of conducting mining and milling operations within the State of California, and county of Nevada.

II.

That said defendant was indebted to the Citizens' bank on account of overdraft, moneys advanced, and interest on same, to date, October 11, 1897, at the special instance and request of said defendant, within two years last past, in the sum of one hundred and thirty-nine dollars and fifteen cents.

III.

That no part of the same has been paid.

IV.

That, prior to the commencement of this action, and on, to wit, October 11, 1897, said Citizens' bank, for a valuable consideration, duly assigned their said claim *in* this plaintiff.

For a ninth cause of action against said defendant, plaintiff alleges:

I.

That said defendant is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and is engaged in the business of conducting mining and milling operations within the State of California, and county of Nevada.

II.

That said defendant was indebted to W. D. Vinton, on account of goods, wares and merchandise sold and delivered to said de-
261 fendant, at said defendant's special instance and request, within two years last past, in the sum of five dollars and seventy-five cents.

III.

That no part of the same has been paid.

IV.

That, prior to the commencement of this action, and on, to wit, October 11, 1897, said W. D. Vinton, for a valuable consideration, duly assigned his said claim to this plaintiff.

For a tenth cause of action against said defendant, plaintiff alleges:

I.

That said defendant is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and is engaged in the business of conducting mining and milling operations within the State of California, and county of Nevada

II.

That said defendant was indebted to P. Orzalli, on account of supplies and merchandise sold and delivered to said defendant, at the special instance and request of said defendant, and within two years last past, in the sum of sixteen dollars and eighty cents.

III.

That no part of the same has been paid.

IV.

That, prior to the commencement, of this action and on, to
262 wit, December 1, 1895, said P. Orzalli, for a valuable consideration, duly assigned his said claim to this plaintiff.

For an eleventh cause of action against said defendant, plaintiff alleges:

I.

That said defendant is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and is engaged in the business of conducting mining and milling operations within the State of California, and county of Nevada.

II.

That said defendant was indebted to M. L. & D. Marsh, a copartnership composed of M. L. Marsh, and D. Marsh, doing business under the firm name and style of M. L. & D. Marsh, on account of

lumber and materials sold and delivered to said defendant, at the special instance and request of said defendant, within two years last past, in the sum of one hundred and forty-four dollars and ninety-five cents.

III.

That no part of the same has been paid.

IV.

That, prior to the commencement of this action, and on, to wit, October 6, 1897, said M. L. and D. Marsh, for a valuable consideration, duly assigned their said claim to this plaintiff.

For a twelfth cause of action against said defendant, plaintiff alleges:

263 I.

That said defendant is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and is engaged in the business of conducting mining and milling operations within the State of California, and county of Nevada.

II.

That said defendant was indebted to South Yuba Water Company on account of water furnished to the mine of said defendant, at the special instance and request of said defendant within two years last past, in the sum of four hundred and fifty-seven dollars and two cents.

III.

That no part of the same has been paid.

IV.

That, prior to the commencement of this action, and on, to wit, February 1, 1896, said South Yuba Water Company, for a valuable consideration, duly assigned their said claim to this plaintiff.

For a thirteenth cause of action against said defendant, plaintiff alleges:

I.

That said defendant is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and is engaged in the business of conducting mining and milling operations within the State of California, and county of Nevada.

264 II.

That said defendant was indebted to B. N. Shoecraft on account of services as general manager and agent in charge of mine and property of the company, at the special instance and request of said defendant, and within two years last past, in the sum of three thousand and fifty dollars.

III.

That no part of the same has been paid.

IV.

That, prior to the commencement of this action, and on, to wit, October 11, 1897, said B. N. Shoecraft, for a valuable consideration, duly assigned his said claim to this plaintiff.

Wherefore, plaintiff demands judgment against said defendant for the sum of four thousand five hundred and four dollars and eighty-seven cents, and for costs of suit.

J. M. WALLING,
Attorney for Plaintiff.

(Endorsed:) No. 2690. In the superior court of Nevada county, State of California. George C. Gaylord, plaintiff, *vs.* Gold Hill Mining Company, defendant. Complaint Filed Oct. 18, 1897. J. J. Greany, clerk, by J. C. Nilon, deputy clerk. J. M. Walling, attorney for plaintiff. Nevada City, Cal.

265 In the Superior Court of the County of Nevada, State of California.

GEORGE C. GAYLORD, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant.

Summons.

Action brought in the superior court of the county of Nevada, State of California, on the complaint filed in said county of Nevada, in the office of the clerk of said superior court.

The people of the State of California send greeting to Gold Hill Mining Company (a corporation), defendant:

You are hereby required to appear in an action brought against you by the above-named plaintiff, in the superior court of the county of Nevada, State of California, and to answer the complaint filed therein, within ten days (exclusive of the day of service), after the service on you of this summons, if served within this county; or, if served elsewhere, within thirty days, or judgment by default will be taken against you, according to the prayer of said complaint.

266 The said action is brought to obtain judgment against you for the sum of four thousand five hundred and four dollars and eighty-seven cents ($4,504.87) alleged to be due plaintiff from you, on account of goods, wares, and merchandise sold and delivered by the plaintiff to you, and work and labor performed for you, at your special instance and request. Plaintiff also demands judgment for his costs of suit, as will more fully appear in the complaint on file herein, to which reference is hereby made. And you are hereby notified that if you fail to appear and answer said complaint, as

above required, the said plaintiff will take judgment against you for the said sum of four thousand five hundred and four dollars and eighty-seven cents, and for costs of suit.

Given under my hand and seal of the said superior court of the county of Nevada, State of California, this eighteenth day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

[SEAL.]

J. J. GREANY, *Clerk*,
By J. C. NILON,
Deputy Clerk.

(Endorsed:) No. 2690 superior court, county of Nevada. George C. Gaylord, plaintiff, *vs.* Gold Hill Mining Company (a corporation), defendant. Summons. Filed October 18, 1897. J. J. Greany, clerk. J. M. Walling, attorney for plaintiff.

267 OFFICE OF THE SHERIFF, *County of Nevada,* } ss:

I hereby certify that I received the within summons on the eighteenth day of October, 1897, at — o'clock —. m., and personally served the same upon the within-named defendant, Gold Hill Mining Company (a corporation), by delivering to and leaving with B. N. Shoecraft, managing agent for said corporation, defendant, personally, in the county of Nevada, on the eighteenth day of October, 1897, a true copy of said summons, attached to a true copy of the complaint in said action therein named.

Given under my hand at Nevada City, this eighteenth day of October, 1897.

D. B. GETCHELL,
Sheriff Nevada County,
By J. H. PASCOE,
Deputy Sheriff.

No. 2690. In the superior court, State of California, county of Nevada. Geo. C. Gaylord *vs.* Gold Hill Mining Company (a corporation).

The clerk will enter default of defendant, Gold Hill Mining Company (a corporation), for failure to answer plaintiff's complaint within the time required by law, and enter judgment in favor of plaintiff.

Dated October 29, 1897.

J. M. WALLING,
Attorney for Plaintiff.

Filed October 29, 1897. J. J. Greany, clerk, by J. C. Nilon, deputy clerk.

268 In the Superior Court of the County of Nevada, State of California.

GEORGE C. GAYLORD, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant.

Default Judgment.

In this action, the defendant, Gold Hill Mining Company (a corporation), having been regularly served with process, and having failed to appear and answer the plaintiff's complaint filed herein, and the legal time for answering having expired, and the default of the said defendant in the premises having been duly entered according to law:

Now, at this day, on application of J. M. Walling, Esq., attorney for said plaintiff, George C. Gaylord, ordered that judgment be entered herein against the said defendant Gold Hill Mining Company (a corporation), in accordance with the prayer of said plaintiff's complaint on file herein.

Wherefore, by reason of the law and the premises aforesaid, it is ordered, adjudged and decreed that George C. Gaylord, plaintiff, do have and recover of and from said defendant, Gold Hill
269 Mining Company (a corporation), the sum of four thousand five hundred and four and eighty-seven one-hundredths ($4,504.87) dollars, together with said plaintiff's costs and disbursements incurred in said action, amounting to the sum of ($6.75) six and seventy-five one-hundredths dollars, with interest thereon at the rate of seven per cent. per annum, from the date hereof till paid.

Dated October 29, 1897.

J. J. GREANY,
County Clerk,
By J. C. NILON,
Deputy Clerk.

No. 2690. Superior court, county of Nevada. Geo. C. Gaylord, plaintiff, *vs.* Gold Hill Mining Company (a corporation), defendant. Judgment by default. Filed October 29, 1897. J. J. Greany, clerk, by J. C. Nilon, deputy. Entered in Judgment Book No. 3, page 412.

270 In the Superior Court in and for the County of Nevada, State of California.

GEORGE C. GAYLORD, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant.

Clerk's Certificate to Judgment-roll.

I, the undersigned, county clerk of the county of Nevada, State of California, and *ex officio* clerk of the superior court, in and for the said Nevada county, do hereby certify the foregoing to be a true

copy of the judgment entered in the above-entitled action, and recorded in Judgment Book 3 of said court, at page 412. And I further certify that the foregoing papers hereto annexed, constitute the judgment-roll in said action.

Witness my hand and the seal of said court this twenty-ninth day of October, 1897.

J. J. GREANY, *Clerk*,
By J. C. NILON,
Deputy Clerk.

271 (Endorsed:) No. 2960. Superior court, county of Nevada. Geo. C. Gaylord, plaintiff, *vs.* Gold Hill Mining Company (a corporation), defendant. Judgment-roll. Filed October 29, 1897. J. J. Greany, clerk, by J. C. Nilon, deputy clerk.

[Ten-cent revenue stamp.]

STATE OF CALIFORNIA, } ss:
County of Nevada, }

I, J. J. Greany, county clerk and *ex officio* clerk of the superior court, in and for said county of Nevada, State of California, do hereby certify that I have compared the foregoing with the original, and find the same to be a full, true and correct copy of the original judgment-roll in the case of Geo. C. Gaylord *vs.* Gold Hill Mining Company (a corporation), on file in this my office.

Witness my hand and the seal of said superior court this tenth day of December, A. D. 1898.

[Seal of Court.]

J. J. GREANY, *Clerk.*

(Endorsed:) Filed December 14, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

272 United States Circuit Court, Northern District of California.

WILLIAMS
vs.
GOLD HILL M. Co. } No. 12531.

DEFENDANT'S EXHIBIT MADDRILL No. 1.

Judgment-roll.

In the Superior Court of the County of Nevada, State of California.

CHARLES E. MADDRILL, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant. } No. 2489.

Default.

In this action the defendant, Gold Hill Mining Company (a corporation), having been served with process by summons and copy of complaint, and having appeared and demurred to said complaint,

and said demurrer thereto being overruled, and defendant given fifteen days to answer, as appears by the papers on file, and having failed to appear and answer the complaint herein, and the legal day for answering having expired, the default of said defendant in the premises is hereby entered.

273 Attest my hand and seal of said court, this eleventh day of June, A. D. 1896.

[SEAL.] J. J. GREANY, *Clerk*,
By J. B. NILON, *Deputy*.

In the Superior Court of Nevada County, State of California.

CHARLES E. MADDRILL, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant.

Complaint.

Now, by attorney comes the above-named plaintiff, and for cause of action, alleges:

I.

That during all the times in this complaint mentioned, the Gold Hill Mining Company was a corporation, duly organized and existing under and by virtue of the laws of West Virginia, and was engaged in the conducting of mining and milling operations in the county of Nevada, State of California.

II.

That during all the times mentioned in this complaint said defendant was the owner of, in the possession, and now is the
274 owner of and in possession of those certain quartz mining claims and premises situated in Nevada mining district, county of Nevada, State of California, about one mile westerly of Nevada City, and commonly known as the "Nevada City and Nevada City Extension quartz mines;" said claims being designated, according to the United States system of surveys, as mineral lot 85 of section eleven, township sixteen north, of range eight east, M. D. M., and lot No. 101 of sections two and eleven, township sixteen north, of range eight east, M. D. M., and also surface ground in connection therewith, together with all hoisting works, mills, machinery, and mining appliances and appurtenances thereupon, or thereunto belonging.

III.

That this plaintiff performed one hundred and thirty-six days' work for said defendant, as a miner, at the agreed price of two dollars and fifty cents per day, and two days' work at the agreed price of three dollars per day, all of said work having been performed by plaintiff since September 1, 1895, upon said hereinbefore-described premises, and at the special instance and request of defendant.

That said work was completed January 29, 1896. That plaintiff was to be paid for said work as the same was performed.

IV.

That the total value of the said work and labor performed by plaintiff, for defendant, at the price aforesaid, is the sum of three hundred and forty-six dollars, upon which there has been
275 paid to plaintiff the sum of ninety-four dollars, leaving a balance due and unpaid of two hundred and fifty dollars.

V.

That on a certain day, to wit, February 25, 1896, said plaintiff duly filed and recorded with the county recorder of the county of Nevada, being the county in which such property is situated, his claim, duly verified by his oath, containing a statement of plaintiff's demands, after deducting all just credits and offsets, with the name of the owners, and also the name of the person who employed plaintiff as aforesaid, with a statement of the terms, time given, and conditions of the contract, and also a description of the property sought to be charged with the lien, sufficient for identification.

That B. N. Shoecraft is the name of the party, who, as, superintendent and manager of said corporation, employed plaintiff to perform said work and labor.

VI.

That plaintiff has paid five dollars and ninety cents as a necessary charge and expense in preparing and recording said lien, viz: five dollars for preparing the same, and ninety cents for the recording thereof.

VII.

That the sum of one hundred dollars is a reasonable sum for attorney's fee in prosecuting this suit in the superior court.

For a second cause of action, plaintiff alleges:

276 I.

That during all the times in this complaint mentioned, the Gold Hill Mining Company was a corporation, duly organized and existing under and by virtue of the laws of West Virginia, and was engaged in the conducting of mining and milling operations in the county of Nevada, State of California.

II.

That during all the times mentioned in this complaint, said defendant was the owner of, in the possession, and now is the owner of and in the possession of those certain quartz mining claims and premises situated in Nevada mining district, county of Nevada, State of California, about one mile westerly of Nevada City, and commonly known as the "Nevada City and Nevada City Extension quartz mines," said claims being designated,

according to the United States system of surveys, as mineral lot 85 of section eleven, township sixteen north, of range eight east, M. D. M., and lot No. 101 of sections two and eleven, township sixteen north, of range eight east, M. D. M., and also all the surface ground in connection therewith, together with all hoisting works, mills, machinery, and mining appliances and appurtenances thereupon, or thereunto belonging.

III.

That Dwight T. Rolfe performed one hundred and twenty-four days' work for said defendant, as a miner, at the agreed price of two dollars and fifty cents, all of said work having been performed by said Dwight T. Rolfe since September 1, 1895, upon said
277 hereinbefore-described premises, and at the special instance and request of defendant.

That said work was completed January 31, 1896. That said Dwight T. Rolfe was to be paid for said work as the same was performed.

IV.

That the total value of the said work and labor performed by said Rolfe, for defendant, at the price aforesaid, is the sum of three hundred and ten dollars, upon which there has been paid to said Rolfe the sum of one hundred and nin-teen dollars, leaving a balance due and unpaid of one hundred and ninety-one dollars.

V.

That on a certain day, to wit, February 29, 1896, said Rolfe duly filed and recorded with the county recorder of the county of Nevada, being the county in which such property is situated, his claim, duly verified by his oath, containing a statement of his demands, after deducting all just credits and offsets, with the name of the owner, and also the name of the person who employed him, said Rolfe, as aforesaid, with a statement of the terms, time given, and conditions of the contract, and also a description of the property sought to be charged with the lien, sufficient for identification.

That B. N. Shoecraft is the name of the party, who, as superintendent and manager of said corporation, employed him, said Rolfe, to perform said work and labor.

VI.

That said Dwight T. Rolfe has paid five dollars and ninety
278 cents as a necessary charge and expense in preparing and recording said lien, viz: five dollars for preparing the same, and ninety cents for the recording thereof.

VII.

That the sum of seventy-five dollars is a reasonable sum for attorney fee in prosecuting this suit in the superior court.

VIII.

That, prior to the commencement of this action, said Dwight T. Rolfe, for a valuable consideration, duly assigned and transferred to this plaintiff, all his right, title and interest in and to said claim of lien, and the money due thereon to this plaintiff.

1. Wherefore, plaintiff prays for judgment against said Gold Hill Mining Company, a corporation, for the sum of four hundred and forty-three dollars and that the same be adjudged a lien against the mining claims and premises above described.

2. That said premises, buildings and appurtenances above described be adjudged and decreed to be sold by the sheriff of said county of Nevada, according to law and the practice of this court, and that the proceeds of such sale be applied to the payment of the costs of these proceedings and sale, and reasonable attorney's fee of one hundred and seventy-five dollars, and said plaintiff's claims, amounting to said sum of four hundred and forty-three dollars, and also for the claim of any other lienholder, if any such there be, on said property, who shall come in and be duly made party to this action.

3. That plaintiff be allowed a reasonable sum for attorney's fee by said court, and costs of preparing and recording said lien.

279 4. That plaintiff, or any other party to this suit, may become purchaser at such sale.

5. That said plaintiff may have such other and further order and relief in the premises as the case may require, and as to the court may seem just.

J. M. WALLING,
Attorney for Plaintiff.

STATE OF CALIFORNIA, } ss:
County of Nevada, }

Charles P. Maddrill, being first duly sworn according to law, deposes and says: I am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof, and that the same is true of my own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters, I believe it to be true.

CHARLES F. MADDRILL.

Subscribed and sworn to before me this thirtieth day of April, 1896.

[SEAL.] I. J. ROLFE,
Notary Public.

(Endorsed:) No. 2489. In the superior court of Nevada county, State of California. Charles E. Maddrill, plaintiff, *vs.* Gold Hill Mining Company (a corporation), defendant. Complaint. Filed April 30, 1896. J. J. Greany, clerk, by J. C. Nilon, deputy. J. M. Walling, attorney for plaintiff.

280 In the Superior Court in and for the County of Nevada, State of California.

CHARLES E. MADDRILL, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant.

Demurrer to Complaint.

Now comes the defendant in the above-entitled cause and demurs to the complaint of plaintiffs on file therein, and for cause of demurrer avers:

That said complaint does not state facts sufficient to constitute a cause of action against defendant.

And, further demurring to the first count, or cause of action in plaintiff's complaint set forth, defendant avers that said count does not state facts sufficient to constitute a cause of action against defendant.

And, further demurring to the second count or cause of action in plaintiff's complaint set forth, defendant avers that said count does not state facts sufficient to constitute a cause of action against said defendant.

Wherefore, defendant demands judgment for its costs of suit.

FRED SEARLS,
Attorney for Defendant.

281 (Endorsed:) No. 2489. In the superior court of Nevada county, Cal. Charles E. Maddrill, plaintiff, *vs.* Gold Hill Mining Company (a corporation), defendant. Demurrer to complaint. Service of within demurrer acknowledged this thirteenth day of May, 1896. ——, attorney for plaintiff. Filed May 14, 1896. J. J. Greany, clerk.

In the Superior Court of the County of Nevada, State of California, Hon. John Caldwell, Superior Judge, Presiding.

CHARLES MADDRILL
vs.
GOLD HILL M'G CO. } 2489. Monday, May 25, 1896.

Order Overruling Demurrer and Granting Fifteen Days to Answer.

In this cause, the demurrer of defendant to the complaint of plaintiff came on this day for hearing by consent of counsel. Said demurrer was submitted without argument.

The court having duly considered the matter, and being fully advised in the premises, orders that said demurrer be and the same is hereby overruled.

282 It is further ordered that defendant be and is hereby granted fifteen days in which to answer.

JOHN CALDWELL,
Superior Judge.

Attest: J. J. GREANY, *Clerk.*

Entered in Minute and Order Book 9, page 497. No. 2489. In the superior court, State of California, county of Nevada. Charles Maddrill *vs* Gold Hill Min'g Co.

The clerk will enter default of defendant for failure to answer plaintiff's complaint within the time required by law.

Dated June 11, 1896.

J. M. WALLING,
Attorney for Plaintiff.

Filed June 11, 1896. J. J. Greany, clerk, by J. C. Nilon, deputy clerk.

283 In the Superior Court, County of Nevada, State of California.

CHARLES MADDRILL, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant.

Decree of Foreclosure.

This cause came on regularly to be heard in open court on this fifteenth day of June, A. D. 1896, J. M. Walling, Esq., appearing for plaintiff, the defendant not appearing.

The court having heard all the evidence in the case, and the proofs adduced, and it duly appearing that the default of the defendant for not answering herein had been duly noted, and after duly considering the same, and being fully advised in the premises, and it appearing therefrom to the court:

First. That the "Gold Hill Mining Company" (a corporation), has duly appeared herein by attorney, and has failed to file an answer herein within the time allowed by the court;

Second. That on January 29, 1896, said defendant was indebted to the plaintiff on account of work and labor performed by said plaintiff for defendant at the special instance and request of
284 said defendant, as a miner, upon those certain mining claims and premises as alleged in the complaint herein. That on, to wit, February 25, 1896, said plaintiff duly filed and recorded with the county recorder of said county, being the county wherein the property was situated, his claim, duly verified by his oath, containing a statement of plaintiff's demands, after deducting all just claims and offsets, with the name of the owner and also the name of the person who employed plaintiff to perform said work and labor, with a statement of the terms, time given, and conditions of the contract, and also a description of the property sought to be charged with said lien, sufficient for identification. That all the allegations of the complaint are true.

That there is still due and owing from said defendant to said plaintiff on account of said lien, the sum of two hundred and fifty-two dollars, and the further sum of five dollars and ninety cents, costs of preparing and filing said lien.

Three. That on July 31, 1896, said defendant was indebted to D.

T. Rolfe, on account of work and labor performed by said Rolfe, for defendant, at the special instance and request of said defendant, as a miner, upon those certain mining claims and premises described in the complaint herein and as alleged in said complaint.

That on, to wit, February 29, 1896, said Rolfe duly filed and recorded with the county recorder of said county, being the county wherein the property was situated, his claim, duly verified by his oath, containing a statement of his demands, after deducting all just claims and offsets, with the name of the owner, and also the name of the person who employed said Rolfe to perform said
285 work and labor, with a statement of the terms, time given, and conditions of said contract, and also a description of the property sought to be charged by said lien, sufficient for identification. That prior to the filing of the complaint herein, said Rolfe, for a valuable consideration, duly assigned said claim of lien to plaintiff. That said Rolfe expended in the preparation and filing said lien the sum of five dollars and ninety cents. That there is due to plaintiff on account of said lien the sum of one hundred and eighty-three dollars and five dollars and ninety cents for preparing and filing the same. That all the allegations of said complaint relative to said last-mentioned lien are true, except that there has been paid on account thereof the further sum of eight dollars, leaving the balance due of one hundred and eighty-three dollars instead of one hundred and ninety-one dollars, as alleged therein.

Four. That the sum of one hundred and fifty dollar*h* is a reasonable sum to be allowed plaintiff as attorney fee on foreclosure.

Now, therefore, on motion of J. M. Walling, Esq., attorney for said plaintiff, it is adjudged and decreed that said liens be foreclosd, that all and singular the premises mentioned and described in said complaint and said liens and hereinafter described, or so much thereof as may be necessary to raise the amount due plaintiff for principal and interest, attorney fees and costs of this suit, and the expenses of sale, be sold at public auction by the sheriff of said county, in the manner provided by law, and according to the course and practice of this court, and that the said sheriff, after the
286 time allowed by law for redemption has expired, executed a deed to the purchaser or purchasers of said premises on said sale.

That the said sheriff, out of the proceeds of said sale, retain his fees, disbursements, and commissions on said sale, and pay to the plaintiff or his attorney, out of said proceeds, the sum of four hundred and thirty-five dollars, principal, eleven dollars and eighty cents costs of preparing and recording said liens, attorney fees in the sum of one hundred and fifty dollars, and costs of this suit, taxed at six dollars and seventy-five cents, with interest thereon at the rate of seven per cent. per annum from the date of this decree.

It is further adjudged and decreed that the purchaser at said sale be let into possession thereof. That if the money arising from said sale be insufficient to pay the amount so found due to plaintiff as above stated, with interest and costs and expenses of sale, as afore-

said, the sheriff specify the amount of such deficiency and balance due to the plaintiff in his return, and that, on the coming in and filing of said return, the clerk of this court docket a judgment for such balance against said defendant, and that the defendant pay to the plaintiff the amount of such deficiency, with interest thereon at the rate of seven per cent. per annum, from the date of said last-mentioned return and judgment, and that the plaintiff have execution therefor.

The lands and premises directed to be sold by this decree are situated, lying and being in the Nevada mining district, county of Nevada, said State, and bounded and particularly described as follows, to wit:

287 Being commonly known as the "Nevada City and Nevada City Extension quartz mines" and being designated, according to the United States system of mineral land surveys, as mineral lot 85 of section eleven, township sixteen north, of range eight east, M. D. M., and lot No. 101 of sections two and eleven, township sixteen north, range eight east, M. D. M., and also all surface ground in connection therewith, together with all hoisting works, mills, machinery and mining appliances and appurtenances thereunto belonging.

Done in open court this June 15, A. D. 1896.

JOHN CALDWELL,
Superior Judge.

(Endorsed:) No. 2489. Superior court, Nevada county, Cal. Charles Maddrill, plaintiff, *vs.* Gold Hill Min'g Co. (corporation), defendant. Decree of foreclosure. Filed June 15, 1896. J. J. Greany, clerk. Entered in Book 3, Judgments, pages 244–'5–'6. J. J. Greany, clerk, by F. W. Schmidt, deputy. J. M. Walling, attorney for plaintiff.

288 In the Superior Court in and for the County of Nevada, State of California.

CHARLES E. MADDRILL, Plaintiff,
vs.
GOLD HILL M'NG CO. (a Corporation), Defendant.

Clerk's Certificate to Judgment-roll.

I, the undersigned, county clerk of the county of Nevada, State of California, and *ex officio* clerk of the superior court, in and for said Nevada county, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled action, and recorded in Judgment Book 3 of said court, at pages 244–'5–'6. And I further certify that the foregoing papers hereto annexed, constitute the judgment-roll in said action.

Witness my hand and the seal of said court, this fifteenth day of June, 1896.

[SEAL.] J. J. GREANY, *Clerk.*

(Endorsed:) No. 2489. Superior court, county of Nevada. Charles E. Maddrill, plaintiff, *vs.* Gold Hill M'ng Co. (a corporation), defendant. Judgment-roll. Filed June 15, 1896. J. J. Greany, clerk.

289 In the Superior Court of the County of Nevada, State of California.

CHARLES E. MADDRILL
vs.
GOLD HILL MINING COMPANY (a Corporation).

Order of Sale.

The people of the State of California to the sheriff of said county, Greeting:

Whereas, Charles E. Maddrill, on the fifteenth day of June, A. D. 1896, recovered a judgment against Gold Hill Mining Company (a corporation), for the sum of four hundred and thirty-five ($435.00) dollars, together with costs of suit, taxed at eighteen dollars and fifty-five cents and counsel fees allowed herein, amounting to the sum of one hundred and fifty dollars, with interest thereon from the date of said judgment, at the rate of seven per cent. per annum till paid, which said judgment is recorded in the Judgment Book 3 of the said superior court, on pages 244 *et seq.*, and whereas it is ordered that the liens set forth in plaintiff's complaint be foreclosed and property therein described, to wit:

Being commonly known as the "Nevada City and Nevada City Extension quartz mines and being designated, accord-
290 ing to the United States system of mineral land surveys, as mineral lot 85 of section eleven, township sixteen north, of range eight east, M. D. M., and lot No. 101 of sections two and eleven, township sixteen north, range eight east, M. D. M., and also all surface ground in connection therewith, together with all hoisting works, mills, machiney and mining appliances and appurtenances thereunto belonging, to be sold at public auction to satisfy said judgment, together with interest and costs.

Now, therefore, you, the said sheriff of the county of Nevada, are hereby commanded and required to proceed to notice for sale and to sell the premises hereinbefore described, to apply the proceeds of such sale to the satisfaction of said judgment, with interest thereon, and costs, together with your fees, and to make and file your report of such sale to the clerk of said superior court within sixty days from the date hereof, and to do all things according to the terms and requirements of the said judgment and the provisions of the statute in such cases made and provided.

Witness Hon. F. T. Nilon, judge of the superior court of the county of Nevada, State of California, and the seal of said court, this, the second day of October, A. D. 1897.

[SEAL.] J. J. GREANY, *Clerk.*

(Endorsed): No. 2489. Superior court, county of Nevada, State of California. Charles E. Maddrill *vs.* Gold Hill Mining Com-
291 pany (a corporation). Order of sale. Filed on return, this twenty-seventh day of October, A. D. 1897. J. J. Greany, clerk, by J. C. Nilon, deputy clerk. J. M. Walling, attorney for plaintiff. Clerk's accruing costs, $1.00.

SHERIFF'S OFFICE, *County of Nevada,* } *ss:*

Sheriff's Return on Foreclosure.

I, D. B. Getchell, sheriff of the county of Nevada, do hereby certify that by virtue and in pursuance of the annexed order of sale and decree of foreclosure and sale, I advertised the property described as follows, to wit: Being commonly known as the "Nevada City and Nevada City Extension quartz mines," and being designated, according to the United States system of mineral land surveys, as mineral lot 85 of section eleven, township sixteen north, of range eight east, M. D. M., and lot 101 of sections two and eleven, township sixteen north, range eight east, M. D. M., and also all surface ground in connection therewith, together with all hoisting works, mills, machinery and mining appliances and appurtenances thereunto belonging, to be sold by me in front of the court-house door, in the city of Nevada, on the twenty-sixth day of October, A. D. 1897, at twelve o'clock, m.; that previous to said sale I posted written notice, particularly describing the property, for twenty-five days, in three public places of the township or city where the property is situated, and also where the property was to be sold; and also caused due and legal notice thereof to be published once a week, in each
292 and every issue of the newspaper hereinafter named, for the same period preceding said sale, in the "Evening Herald," a daily newspaper published in the county of Nevada, and that on Tuesday, the twenty-sixth day of October, 1897, the day on which said property was so advertised to be sold as aforesaid, I attended at the time and place fixed for said sale, and exposed the said property for sale in one parcel at public auction, according to law, to the highest bidder for cash in hand, lawful money of the United States, when Charles E. Maddrill *et al.*, being the highest bidder therefor, the said property was struck off by me to the said Chas. Maddrill *et al.* for the sum of six hundred seventy-five and twenty-five one-hundredths dollars, in United States gold coin, which was the whole price bid, and which I acknowledge to have received; and that I delivered to said purchaser a certificate of said sale, and filed a duplicate thereof in the office of the county recorder of the said Nevada county. And I further certify that I deducted from the said sum of six hundred and seventy-five and twenty-five one-hundredths dollars my fees, commissions, and expenses, amounting to the sum of nine dollars and fifty cents, leaving a net balance of six hundred and sixty-five dollars and seventy-five cents, which net balance I have paid to plaintiff's attorney, whose receipt therefor is hereto attached.

And I herewith return the within order of sale satisfied.
293 Dated at Nevada City, this twenty-sixth day of October, 1897.

D. B. GETCHELL,
Sheriff of Nevada County,
By J. H. PASCOE,
Deputy Sheriff.

NEVADA CITY, *October* 26, 1897.

Received from D. B. Getchell, sheriff of Nevada county, State of California, the sum of six hundred sixty-five and seventy-five one-hundredths dollars, proceeds of sale made this day on foreclosure, in case No. 2489 in the superior court, county of Nevada, State of California, Charles E. Maddrel *et al. vs.* Gold Hill M'ng Co. (a corporation). No cash was actually received, but this receipt is given to show a release of said sheriff.

Dated October 26, 1897.

J. M. WALLING,
Attorney for Plaintiff.

[Ten-cent revenue stamp.]

STATE OF CALIFORNIA, }
County of Nevada, } *ss:*

I, J. J. Greany, county clerk and *ex officio* clerk of the superior court, in and for said county of Nevada, State of California, do hereby certify that I have compared the foregoing with the original, and find the same to be a full, true, and correct copies of the original judgment-roll, order of sale, and return on same in case of Chas. E. Maddrill *vs.* Gold Hill M'g Co., (a corporation), on file in this my office.

294 Witness my hand and the seal of said superior court, this tenth day of December, A. D. 1898.

[SEAL OF COURT.] J. J. GREANY, *Clerk.*

(Endorsed:) Filed Dec. 14, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

United States Circuit Court, Northern District of California.

WILLIAMS
vs.
GOLD HILL MINING CO. } No. 12531.

DEFENDANTS' EXHIBIT GAYLORD No. 3.

Superior Court of the County of Nevada, State of California.

GEO. C. GAYLORD, Plaintiff,
vs.
GOLD HILL MINING COMPANY (a Corporation), Defendant. }

Certificate of Sale of Real Estate on Execution.

Judgment rendered on the fourth day of December, 1896, in the superior court of the county of Nevada, State of California.

295 I, D. B. Getchell, sheriff of the county of Nevada, do hereby certify that, by virtue of an execution in the above action, tested the fourth day of December, A. D. 1896, by which I was commanded to make the amount of twelve thousand four hundred thirty-nine and twenty-six one hundredths ($12,439.26) dollars, together with eight ($8.00) dollars, costs, to satisfy the judgment in said action, with interest thereon and costs, out of the personal property of the above defendant in said action, and, if sufficient personal property could not be found, then out of the real property belonging to the said defendant, Gold Hill Mining Company, (a corporation), on the thirtieth day of October, 1897, or at any time thereafter, as by the said writ, reference being thereunto had, more fully appears, I have levied on, and this day sold at public auction, according to the statute in such case made and provided, to Geo. C. Gaylord, who was the highest bidder, for the sum of thirteen thousand, three hundred thirty-one and eighty-two one hundredths ($13,331.82) dollars, which was the whole price paid by him for the same, the real estate described as follows, to wit:

Being commonly known as the "Nevada City and Nevada City Extension quartz mines," and being designated, according to the United States system of mineral land surveys, as mineral lot 85 of section eleven, township sixteen north, of range eight east, M. D. M., and lot No. 101 of sections two and eleven, township sixteen north, range eight east, M. D. M., and also all surface ground in connection therewith, together with all hoisting works, mills, machinery, and mining appliances and appurtenances thereunto belonging.

296 Also, that portion of mineral lot No. 49 of section eleven, township sixteen north, of range eight east M. D. M., commencing the northeast corner of said lot 49; thence running south to a point fifty feet north of Gentty's flume; thence due west to the west line of said lot; thence north to the northwest corner of said lot No. 49, and thence east to the place of beginning.

That the price of each distinct lot and parcel was as follows:
That the whole of said property was sold in one parcel.
And that the said real estate is subject to redemption in twelve months, pursuant to the statute in such case made and provided.
Given under my hand this thirtieth day of October, A. D. 1897.

D. B. GETCHELL,
Sheriff of Nevada County, State of California,
By J. H. PASCOE,
Deputy Sheriff.

Filed and recorded at the request of D. B. Getchell, sheriff, Oct. 30, A. D. 1897, at 30 min. past 1 o'clock. Jno. Werry, recorder.

STATE OF CALIFORNIA, } ss:
County of Nevada, }

I, Jno. Werry, county recorder in and for the county of Nevada, State of California, do hereby certify that I have compared the foregoing and find the same to be a full, true, and correct copy of certificate of sale on record in Book 2 of Certificates of Sale, page 401, in this, my office.

297 Witness my hand and official seal, this tenth day of December, A. D. 1898.

[SEAL.]

JOHN WERRY,
County Recorder, Nevada County, Cal.

[Ten-cent int. rev. stamp.]

(Endorsed:) Filed and recorded at the request of D. B. Getchell, sheriff, Oct. 30, A. D. 1897, at thirty minutes past 1 o'clock, p. m., in Liber 2 of Sheriff's Certificates, page 401. Jno. Werry, recorder. Filed Dec. 14, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

United States Circuit Court, Northern District of California.

WILLIAMS
vs.
GOLD HILL MINING CO. } No. 12531.

DEFENDANTS' EXHIBIT MADDRILL NO. 2.

Certificate of Sale on Foreclosure.

I, D. B. Getchell, sheriff of the county of Nevada, State of California, do hereby certify that, under and by virtue of a certain judgment or decree of foreclosure, and an order of sale, issued out of the superior court of the county of Nevada, State of California, in the action numbered 2489, wherein Chas. E. Maddrill and Dwight

298 T. Rolfe are plaintiffs, and Gold Hill Mining Company (a corporation) are defendants, which said judgment or decree was rendered on the fifteenth day of June, 1896, and entered on the fifteenth day of June, 1896, duly attested the fifteenth day of June, A. D. 1896, and to me, as such sheriff, duly directed and delivered,

whereby I was commanded to sell the property hereinafter described, according to law, and to apply the proceeds of such sale toward the satisfaction of the judgment in said action, amounting to the sum of four hundred thirty-five ($435.00), dollars, together with costs of suit, taxed at eighteen fifty-five one-hundredths dollars ($18.55), and counsel fees to the sum of one hundred fifty ($150.00) dollars, with interest and costs of suit, I duly levied on, and on the 26th day of October, A. D. 1897, at twelve o'clock, noon, in front of the court-house door, in the city of Nevada, in the said county of Nevada, I duly sold at public auction, according to law, after due and legal notice, to Chas. E. Maddrill and Dwight T. Rolfe, who made the highest and best bid therefor, at such sale, for the sum of six hundred seventy-five and twenty-five one-hundredths ($675.00), dollars, which was the whole sum paid by Maddrill and Rolfe. The said real estate, in said decree and order of sale, lying and being in said county of Nevada, State of California, and described as follows, to wit: Being commonly known as the "Nevada City and Nevada City Extension quartz mines," and being designated, according to the United States system of mineral land surveys, as mineral lot 85
of section eleven, township sixteen north, of range eight east,
299 M. D. M., and lot 101 of sections two and eleven, township
sixteen north, range eight east, M. D. M., and, also, all surface ground in connection therewth, together with all hoisting works, mills, machinery and mining appliances and appurtenances thereunto belonging.

And I do hereby certify that the said property was sold in one parcel, and that the said sum of six hundred seventy-five twenty-five one-hundredths ($675.25) dollars was the highest bid made, and the whole price paid therefor, and that the same is subject to redemption in twelve months, pursuant to the statute in such case made and provided.

Given under my hand this twenty-sixth day of October, A. D. 1897.

D. B. GETCHELL,
Sheriff of Nevada County, State of California,
By J. H. PASCOE,
Deputy Sheriff.

Filed and recorded at the request of D. B. Getchell, sheriff, Oct 26, A. D. 1897, at thirty minutes past four o'clock, p. m.

JNO. WERRY, *Recorder.*

STATE OF CALIFORNIA, }
County of Nevada, } ss:

I, Jno. Werry, county recorder in and for the county of Nevada, State of California, do hereby certify that I have compared the foregoing and find the same to be a full, true, and correct copy of certificate of sale on record in Book 2 of Certificates of Sale, page 2, in this, my office.

300 Witness my hand and official seal, this tenth day of December, A. D. 1898.

[SEAL.]

JNO. WERRY,
County Recorder, Nevada County, Cal.

[Ten-cent revenue stamp.]

(Endorsed:) Filed and recorded at the request of D. B. Getchell, sheriff, Oct. 26, A. D. 1897, at thirty minutes past four o'clock, p. m., in Liber 2 of Sheriff's Certificates, page 2. Jno. Werry, recorder. Filed Dec. 14, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

301 United States Circuit Court, Northern District of California.

FREDERICK WILLIAMS, Complainant, Appellant,
vs.
GEORGE C. GAYLORD, CHARLES E. MADDRILL, and DWIGHT T. Rolfe, Defendants, Appellees, Impleaded with The Gold Hill Mining Company, Defendant.

Petition for Appeal.

Comes now Frederick Williams, by Thomas S. Ford, his solicitor, and files herein a petition of appeal to the United States circuit court of appeals for the ninth circuit, together with his assignment of errors herein, in the words following, to wit:

Frederick Williams, complainant herein, represents that the court has erred in the proceedings, and in the decree in the above-entitled cause, which errors have been designated and set forth in the assignment of errors which is filed herewith, and as part hereof.

Wherefore, said Frederick Williams prays an appeal to the
302 circuit court of appeals, and that a proper citation issue requiring, as therein limited, the defendants, George C. Gaylord, Charles E. Maddrill and Dwight T. Rolfe, to appear and show cause to the said circuit court of appeals why the decree in said cause should not be vacated and reversed.

Dated November 15, 1899.

THOS. S. FORD,
Solicitor for Frederick Williams, Appellant, Nevada City, Cal.

C. WALTER ARTZ,
E. J. McCUTCHEN,
Counsel.

Appeal allowed.
WM. M. MORROW,
Circuit Judge.

(Endorsed:) Filed November 25, 1899. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

303 United States Circuit Court, Northern District of California.

FREDERICK WILLIAMS, Complainant, Appellant,
vs.
GEORGE C. GAYLORD, CHARLES E. MADDRILL, and DWIGHT T. Rolfe, Defendants, Appellees, Impleaded with The Gold Hill Mining Company, Defendant.

Assignment of Errors.

Frederick Williams complains of errors in the proceedings in the United States circuit court for the northern district of California, in the above-entitled suit, and in the decree dismissing the bill of complaint rendered therein, and assigns the following errors:

I.

The court below erred in entering a decree dismissing the complainant's bill of complaint.

II.

304 The court erred in deciding that the provision of the constitution of California, contained in article twelve, section fifteen thereof, related to or limited the right of the board of directors or other proper authority of the defendant Gold Hill Mining Company, in conformity with the laws of the State of West Virginia, the domicile of said corporation, to authorize the mortgage in question.

III.

The court erred in deciding that the legislature of California had power to legislate upon the relations existing between the defendant company and its stockholders.

IV.

The court erred in holding the public policy of the State of California is material to the issue in this action.

V.

The court erred in holding that the decisions of the State of California are material to the issues decided in this action.

VI.

The court erred in holding that the statute of California of 1880, page 131, affects the defendant company.

VII.

The court erred in holding that the vote or formal ratification under the laws of the State of California on the part of the holders of at least two-thirds of the capital stock of the defendant company was an essential prerequisite to the execution of the mortgage

sought to be foreclosed in this action, without which said action of the stockholders said mortgage and the bonds issued thereunder are invalid and unenforceable.

305

VIII.

The court erred in holding that the mortgage sued upon herein was not authorized by due corporate action.

IX.

The court erred in holding that the mortgage sued upon herein is not a valid encumbrance upon the land or mining property described therein within the State of California.

X.

The court erred in holding that the bonds purporting to be secured by said mortgage were not legally authorized, and, therefore, invalid and not secured thereby.

XI.

The court erred in failing to hold that the mortgage sued upon was duly and legally ratified by the defendant corporation, its stockholders and directors.

XII.

The court erred in holding that the defendants, Gaylord, Maddrill and Rolfe, being judgment creditors of the defendant corporation, can, in that capacity, question the validity of the action of the corporation, its incorporators, directors, or stockholders, in authorizing the mortgage in question.

XIII.

The court erred in holding that the said defendants, Gaylord, Maddrill, and Rolfe, being judgment creditors of the defendant corporation, can, in that capacity, question the validity of the issue of the bonds purporting to be secured by the mortgage sued on.

306

XIV.

The court erred in failing to hold that the defendants, Gaylord, Maddrill and Rolfe, being judgment creditors of the defendant corporation, are, in that capacity, estopped to question the validity of the mortgage sued upon by reason of the ratification thereof by said defendant corporation, its stockholders and directors.

XV.

The court erred in failing to judicially declare the validity of the mortgage sued upon and the bonds outstanding thereunder paramount to the alleged lien of said judgment creditors.

XVI.

The court erred in failing to direct a decree of foreclosure and sale in favor of the complainant and against the defendant herein.

Dated November 15, 1899.

THOS. S. FORD,
Solicitor for Frederick Williams, Complainant, Appellant, Nevada City, Cal.

C. WALTER ARTZ,
E. J. McCUTCHEN, *Counsel.*

(Endorsed): Filed November 25, 1899. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

307 At a stated term, to wit, the November term, A. D. 1899, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room in the city and county of San Francisco, on Saturday, the twenty-fifth day of November, in the year of our Lord one thousand eight hundred ninety-nine.

Present: The Honorable William W. Morrow, circuit judge.

FREDERICK WILLIAMS, Trustee, Complainant,
vs.
THE GOLD HILL MINING COMPANY (a Corporation) *et al.*, Respondents. } No. 12531.

Order Allowing Appeal.

Upon motion of complainant's solicitor, and upon filing a petition for an order allowing appeal, together with an assignment of errors, it is ordered that said complainant be and he hereby is, allowed to prosecute an appeal from the final decree heretofore filed and entered herein, to the United States circuit court of appeals for the ninth circuit, and the amount of the bond for costs
308 to be furnished by said complainant upon said appeal is hereby fixed at the sum of two hundred and fifty dollars. It is further ordered that a certified transcript of the record and proceedings herein be forthwith transmitted to said United States circuit court of appeals for the ninth circuit.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

FREDERICK WILLIAMS, Complainant,
vs.
THE GOLD HILL MINING COMPANY (a Corporation) *et al.*, Respondents. } No. 12531.

Bond on Appeal.

Know all men by these presents that we, Frederick Williams, as principal, and Fidelity Deposit Company of Maryland a corporation,

as surety, are held and firmly bound unto George C. Gaylord, Charles E. Maddrill and Dwight T. Rolfe in the full and just sum of two hundred and fifty dollars to be paid to the said George C. Gaylord, Charles E. Maddrill and Dwight T. Rolfe, their attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-seventh day of
309 November, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas, lately at a session of the circuit court of the United States, for the northern district of California, in a suit depending in said court between the said Frederick Williams as complainant, and said George C. Gaylord, Charles E. Maddrill and Dwight T. Rolfe, and The Gold Hill Mining Company, defendants, judgment and decree was rendered against the said complainant, and the said complainant, having obtained from said court an order granting him leave to reverse the said judgment and decree rendered and entered in the aforesaid court, and a citation directed to the said defendants, George C. Gaylord, Charles E. Maddrill and Dwight T. Rolfe, is about to be issued citing and admonishing them to be and appear at a United States circuit court of appeals for the ninth circuit, to be holden at San Francisco, in the State of California, on the twenty-sixth day of December next,

Now, the condition of the above obligation is such, that if the said complainant, Frederick Williams, shall prosecute his appeal to effect, and shall answer all damages and costs that shall be awarded against him if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

——— ———. [SEAL.]

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By C. H. WILSON, *Its Attorney-in-fact.*

Attest: FRANK L. GILBERT, [CORPORATE SEAL.]
Its General Agent.

310 (Endorsed:) The within bond is hereby approved for the sum of two hundred and fifty dollars, this twenty-ninth day of November, A. D. 1899. Wm. W. Morrow, judge. Filed November 29, 1899. Southard Hoffman, clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

FREDERICK WILLIAMS, Trustee, Complainant,
vs.
THE GOLD HILL MINING COMPANY ET AL., Defendants.

Order Allowing Withdrawal of Exhibits.

Good cause appearing therefore, it is ordered that the following documents, viz: stock book marked Exhibit No. 1, and minute

book marked Exhibit "B¹" (introduced at the taking of depositions of complainant's witnesses before Andrew J. Perry, notary public, at New York), be allowed to be withdrawn from the files of this cause, for the purpose of being transmitted to the United States circ-
311 cuit court of appeals for the ninth circuit, for use in connection with complainant's appeal to said court herein.

WM. W. MORROW,
Circuit Judge.

NOTE.—The original stock certificate book and minute book of the Gold Hill Mining Company have been deposited with the clerk of this court under order of the circuit court.

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

FREDERICK WILLIAMS, Trustee, Complainant,
vs.
THE GOLD HILL MINING COMPANY (a Corporation) *et al.*, Respondents. } No. 12531.

Certificate to Transcript on Appeal.

I, Southard Hoffman, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, do hereby certify the foregoing pages, numbered from one to two hundred and seventy-seven, inclusive, to be a full, true and correct copy of the record and proceedings in the above-entitled cause, and that the same together constitute the transcript of the record herein, upon appeal to the United States circuit court of appeals for the ninth circuit.

I further certify that the cost of the foregoing transcript of
312 record is one hundred and eighty-two dollars and fifty-five cents, and that said amount was paid by the attorneys for the complainant.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said circuit court this twenty-eighth day of December in the year of our Lord one thousand eight hundred and ninety-nine.

[SEAL.] SOUTHARD HOFFMAN,
Clerk of the United States Circuit Court, Ninth Judicial Circuit, Northern District of California.

(Cancelled 10ct. int. rev. stamp.)

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to George C. Gaylord, Charles E. Maddrill, and Dwight T. Rolfe, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the ninth circuit, to be

holden at the city of San Francisco, in the State of California, on the twenty-sixth day of December next, pursuant to an order allowing an appeal, entered in the clerk's office of the circuit court of the United States, ninth circuit, northern district of California, in a certain action numbered 12531, wherein Frederick Williams is the appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

313 Witness, the Honorable Wm. W. Morrow, judge of the United States circuit court, ninth circuit, northern district of California, this twenty-ninth day of November, A. D. 1899.

WM. W. MORROW, *Judge.*

(Endorsed:) Original. No. 12531. Circuit court of the United States, ninth circuit, northern district of California. Frederick Williams *vs.* The Gold Hill Mining Company *et al.* Citation. Service of within citation and receipt of a copy thereof is hereby admitted this first day of December, 1899. J. M. Walling, attorney for appellees. Filed December 6th, 1899. Southard Hoffman, clerk.

(Endorsed:) No. 581. In the United States circuit court of appeals for the ninth circuit. Frederick Williams, appellant, *vs.* George C. Gaylord, Charles E. Maddrill and Dwight T. Rolfe, appellees. Appeal from the circuit court of the United States for the northern district of California. Transcript of record. Filed Dec. 28, 1899. F. D. Monckton, clerk.

314 EXHIBIT No. 1.

STOCK CERTIFICATES.

328 At a stated term, to wit: the October term A. D. 1899 of the United States circuit court of appeals for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Monday the twenty-sixth day of February in the year of our Lord one thousand, nine hundred.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable Thomas P. Hawley, district judge.

FREDERICK WILLIAMS, Appellant,
vs.
GEORGE C. GAYLORD ET AL. } No. 581.

Ordered appeal argued by C. Walter Artz, Esquire, counsel for appellant, and Curtis H. Lindsay, Esquire, counsel for appellees, and submitted to the court for consideration and decision, with leave to counsel for appellant to correct record.

329 At a stated term, to wit: the October term A. D. 1899 of the United States circuit court of appeals for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Tuesday the twenty-seventh day of February in the year of our Lord one thousand, nine hundred.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable Thomas P. Hawley, district judge.

FREDERICK WILLIAMS, Appellant,
vs.
GEORGE C. GAYLORD ET AL. } No. 581.

Upon motion of C. Walter Artz, Esquire, counsel for appellant, ordered leave granted to add "note" to page 310 of printed record.

330 In the United States Circuit Court of Appeals for the Ninth Circuit.

FREDERICK WILLIAMS, Appellant,
vs.
GEORGE C. GAYLORD, CHARLES E. MADDRILL, and Dwight T. Rolfe, Appellees. } No. 581.

Appeal from the circuit court of the United States for the northern district of California.

Thomas S. Ford, for appellant; C. Walter Artz and Edward J McCutchen, of counsel.

Curtis H. Lindley, Henry Eickhoff and Frederick Searls, for appellees.

Before Gilbert and Ross, circuit judges, and Hawley, district judge.

HAWLEY, district judge, delivered the opinion of the court.

This is a suit in equity to foreclose a mortgage or deed of trust executed July 1, 1890, by the Gold Hill Mining Company,

331 a corporation, organized and existing under and by virtue of the laws of the State of West Virginia, in favor of G. Livingston Morse, as trustee, to secure the payment of certain bonds issued by the corporation upon certain mining property situate in Nevada county, California. Morse died in 1891, and Frederick Williams, appellant herein, was substituted as trustee of the trusts mentioned in the mortage or deed of trust. He commenced this suit in 1897, to foreclose the indenture against the Gold Hill Mining Company. The appellees Gaylord, Maddrill and Rolfe were made parties to the suit under an averment that they had, or claimed to have, some interest, or lien upon, the premises sought to be foreclosed as judgment creditors, which interest or lien, if any, was alleged to be subsequent in time to the lien of appellant's mortgage. The evidence upon this point shows that the judgments obtained by them were entered in the years 1896 and 1897, long subsequent to the execution and recording of the indenture sought to be foreclosed. The corporation made default and a decree *pro confesso* was entered against it in January, 1898. The judgment creditors in their answer, among other things, alleged that the indenture was void because not made in conformity with the requirements of "An act for the further protection of stockholders in mining companies, approved April 23, 1880." (Stats. Cal. 1880, 131.) This statute reads as follows:

"SECTION 1. It shall not be lawful for the directors of any mining corporation to sell, lease, mortgage, or otherwise dispose of the whole or any part of the mining ground owned or held by such corporation, nor to purchase or obtain, in any way, any additional mining ground, unless such act be ratified by the holders of at least two-thirds of the capital stock of such corporation. Such ratification may be made either in writing, signed and acknowledged by such stockholders, or by resolution duly passed at a stockholders' meeting called for that purpose."

332 The circuit court sustained this defense and entered a decree dismissing the bill of foreclosure. From this decree the appeal herein is taken.

If this statute applies to foreign as well as domestic corporations, our duty is at an end. We are foreclosed by the decisions of the supreme court of California from giving any independent consideration to the construction of this act.

In McShane *v.* Carter, 80 Cal. 310, the court was called upon to construe the act above quoted. In so doing the court said:

"We think that the provision of said act goes to the power or authority of the directors. It cannot be construed to relate merely to their personal liability, for no penalty is imposed upon them; and to so construe it would be to practically nullify the act. In our opinion, the directors of mining corporations have no power or authority to convey the mining ground without the consent of holders of two-thirds of the stock, given as prescribed by the act. And it follows without such consent the title does not pass. And if this be so, the question can be raised by any one who connects himself with the title of the corporation which owned the property, as well as by

the stockholders thereof. Nor can the consent of the stockholders be presumed from the mere fact of the conveyance, whether under the corporate seal or not, for such consent or 'ratification' may be after the deed is executed, and hence is not necessarily or presumptively involved in the execution of such deed."

Under this decision there is no room for any discussion as to whether or not there has been any substantial compliance in the present case with the provisions of the statute. There was no literal compliance. And this is held absolutely essential by the decision in McShane *v.* Carter. This decision was followed in the subsequent cases of Pekin Mining & Milling Co. *v.* Kennedy, 81 Cal. 356, 362 (in which the principles were applied to a foreign corporation), Granite Gold M. Co. *v.* McGinnis, 115 Cal. 131, 137, and John-
333 son *v.* California Lustral Co., 59 Pac. 595, and has, therefore, become the settled law of this State.

The national courts are not permitted "to run counter to the decisions of the highest State court upon questions involving the construction of State statutes or constitutions, on any alleged ground that such decisions are in conflict with sound principles of general constitutional law." Fallbrook Irrigation District *v.* Bradley, 164 U. S. 112, 155.

That we are absolutely bound by the decisions of the supreme court in McShane *v.* Carter and Pekin Company *v.* Kennedy, is too well settled to require any citation of the numerous authorities upon this subject. It matters not that the courts of other States in the construction of similar statutes have expressed more liberal views with reference to compliance with the same statutory provisions. Were it an open question such decisions would have, and have had, great weight and force in determining it. But whatever our individual views may be, the fact remains that it is always our duty to follow the decisions of the highest court of a State in the construction of its own statutes, where no question of general or commercial law, or right under the Federal Constitution is involved. In such cases the question is not, how the statute should be construed, but what construction has been given to it by the supreme court of the State. When that is ascertained, as here, by clear, plain and unmistakable language, it is the duty of the national courts to follow it. Each State has the unquestioned right to determine for itself under what circumstances and upon what conditions property
334 situated within the State may be conveyed and the extent of the right conferred thereby.

In Brine *v.* Insurance Co., 96 U. S. 627, 636, following the decision in McGoon *v.* Scales, 9 Wall. 23, it was expressly held that the laws of the State in which land is situated control exclusively its descent, alienation, and transfer, and the effect and construction of instruments intended to convey it. The principles therein announced have been universally followed.

Chicago Union Bank *v.* Kansas City Bank, 136 U. S. 223, 235;
Etheridge *v.* Sperry, 139 U. S. 266, 276;
Cutler *v.* Huston, 158 U. S. 423, 429;
Wilson *v.* Perrin, 62 Fed. 629, 631; 11 C. C. A. 71.

In Etheridge *v.* Sperry the court, upon this subject, said:

"The matter is not one of purely general commercial law. While chattel mortgages are instruments of general use, each State has a right to determine for itself under what circumstances they may be executed, the extent of the rights conferred thereby and the conditions of their validity. They are instruments for the transfer of property, and the rules concerning the transfer of property are primarily, at least, a matter of State regulation. We are aware that there is great diversity in the rulings on this question by the courts of the several States. But whatever may be our individual views as to what the law ought to be in respect thereto, there is so much of a local nature entering into chattel mortgages that this court will accept the settled law of each State as decisive in respect to any case arising therein."

In Chicago Union Bank *v.* Kansas City Bank, *supra*, the court quoted with approval the language of Mr. Justice Field in Christy *v.* Pridgeon, 4 Wall. 106, 203:

"The interpretation within the jurisdiction of one State becomes a part of the law of that State, as much so as if incorporated into the body of it by the legislature. If, therefore, different interpretations are given in different States to a similar local law, that law in effect becomes by the interpretations, so far as it is a rule of our action, a different law in one State from what it is in the other."

In Forsyth *v.* Hammond, 166 U. S. 505, 518, the court said:

335 "The construction by the courts of a State of its constitution and statutes is, as a general rule, binding on the Federal courts. We may think that the supreme court of a State has misconstrued its constitution or its statutes, but we are not at liberty to therefore set aside its judgments. That court is the final arbiter as to such questions."

The law is well settled that each State has the power to exclude any foreign corporation from entering into its limits for the transaction of business except upon such terms and conditions as it may see fit to impose. As was said in Hooper *v.* California, 155 U. S. 648, 656:

"The power to exclude embraces the power to regulate, to enact and enforce all legislation in regard to things done within the territory of the State which may be directly or incidentally requisite in order to render the enforcement of the ceded power efficacious to the fullest extent, subject always, of course, to the paramount authority of the Constitution of the United States."

The constitution of California, article 12, section 15, declares that "no corporation organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State." This constitutional provision declares the public policy of the State; and the supreme court having applied the provisions of section 1 of the statute under consideration to foreign corporations, and the words "any mining corporation" in said section being broad enough to include foreign as well as domestic corporations, we are not at liberty to say that such was not

the intention of the legislature because the other provisions of the act are made applicable solely to domestic corporations.

This brings the construction of the statute in harmony with
336 the provisions of the constitution. Grenada Co. *v.* Brogden, 112 U. S. 261, 269.

The second and third sections of the act provide that the stock in each mining corporation shall stand in the books of the company in the names of the real owners or in the names of the trustees of the real owners, and provision is made as to how the stock of the corporation shall be voted.

By these provisions the legislature sought only to regulate and control the internal affairs of the domestic corporations, as it had the right to do. Under the provisions of section one the legislature did not attempt to regulate the internal affairs of a foreign corporation. It had no power to do so.

Miles *v.* Woodward, 115 Cal. 308, 311.

It sought to regulate and control the business affairs of all corporations, both foreign and domestic, with reference to the manner in which their property situate within the State may be disposed of by deed or mortgage. This it had the power to do.

The decisions of the supreme court of California have disposed of all the questions presented herein adversely to the views contended for by appellant. Our duty ends, as it began, by determining the extent and effect of these decisions.

The decree of the circuit court is affirmed, with costs.

(Endorsed:) Opinion. Filed May 4, 1900. F. D. Monckton, clerk.

337 United States Circuit Court of Appeals for the Ninth Circuit.

FREDERICK WILLIAMS, Appellant,
vs.
GEORGE C. GAYLORD ET AL., Appellees. } No. 581. Decree.

Appeal from the circuit court of the United States for the northern district of California.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of California, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court in this cause be, and the same is hereby, affirmed, with costs.

(Endorsed:) Decree. Filed and entered May 4, 1900, F. D. Monckton, clerk.

338 At a stated term, to wit: the October term A. D. 1899 of the United States circuit court of appeals for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Thursday, the twenty-fourth day of May, in the year of our Lord one thousand, nine hundred.

Present: The Honorable William B. Gilbert, circuit judge; Honorable William W. Morrow, circuit judge; Honorable Thomas P. Hawley, district judge.

FREDERICK WILLIAMS, Appellant,
vs.
GEORGE C. GAYLORD ET AL. } No. 581.

Upon motion of Charles Page, Esquire, ordered issuance of mandate herein stayed twenty days in addition to the time provided by rule 32, with leave to file a petition for a rehearing within the time so extended.

339 In the United States Circuit Court of Appeals for the Ninth Circuit.

FREDERICK WILLIAMS, Appellant,
against
GEORGE C. GAYLORD, CHARLES E. MADDRILL, and Dwight T. Rolfe. } No. 581.

Petition for Rehearing.

Thomas S. Ford, solicitor for appellant, Nevada City, California.
C. Walter Artz, Edward J. McCutchen, of counsel.

340 United States Court of Appeals for the Ninth Circuit.

FREDERICK WILLIAMS, Appellant,
against
GEORGE C. GAYLORD and Others. } No. 581.

Petition for Rehearing.

The appellant herein respectfully presents his petition for rehearing of this cause under the provisions of rule 29 of this court and, in accordance therewith, briefly states the grounds for such petition:

I.

The opinion herein fails to distinguish between a ratification of the mortgage by a resolution of the stockholders and a "writing signed and acknowledged by such stockholders."

The statute provides that a conveyance, lease or mortgage may be ratified in one of two ways:

341 (1.) "Either in writing, signed and acknowledged by such stockholders," or

(2.) "By resolution duly passed at a stockholders' meeting called for that purpose."

The opinion herein proceeds upon the theory that there has been no literal compliance with this act by way of resolution. It does not pass upon the validity of the consent evidenced by the act of

the president and secretary, (together owning two-thirds of the stock) in signing the mortgage.

This mode of consent was all that saved the case of G. V. B. Mining Co. *v.* First National Bank, 95 Fed., 23. There, however, the president and secretary of the mortgagor company did not together own two-thirds of the company's stock. but the written assent of a third stockholder endorsed upon the mortgage was necessary to make up the required proportion and was held sufficient. In the case at bar Shoecraft and Littlefield held, as we show in our main brief, more than two-thirds of the stock and the instrument signed by them, viz., the mortgage, was also acknowledged as required by the statute. A comparison of the New York and California statutes by the aid of parallel columns will show that neither of these enactments require that the consent be by separate paper. They differ only with respect to the acknowledgment and filing:

California Statute.	*New York Statute.*
(Stats. 1880, p. 131.)	(Laws 1892, c. 688.)
"It shall not be lawful for the directors of any mining corporation to sell, lease, mortgage or otherwise dispose of the whole or any part of the mining ground owned or held by such corporation, nor to purchase or 342 obtain in any way any additional mining ground, unless such act be ratified by the holders of at least two-thirds of the capital stock of such corporation. Such ratification may be made either in writing signed and acknowledged by such stockholders, or by resolution duly passed at a stockholders' meeting called for that purpose."	"No such mortgages except purchase-money mortgages shall be issued without the consent of the stockholders owning at least two-thirds of the stock of the corporation, which consent shall be in writing and shall be filed and recorded in the office of the clerk or register of the county where it has its principal place of business, or shall be given by vote at a special meeting of the stockholders called for that purpose."

A glance at the New York statute, shows that a case may very naturally arise where the written consent would not be filed in the county where the land mortgaged was located but must be filed where the principal business office of the company might be fixed. In the California statute there is no requirement making the filing of the consent necessary but it must be acknowledged.

Under the New York statute this court held in the G. V. B. Mining Co. case, *supra*, that no separate consent was necessary, it not appearing that the New York courts have ever ruled on that point. It would seem to follow that the same rule should be followed in this case unless the California court has held otherwise.

Examination of the case of McShane *v.* Carter, 80 Cal., 310, shows (1) that there was no resolution as called for by the statute, and (2) that it did not appear that the officers of the corporation who ex-

ecuted the mortgage in fact held more than two-thirds of the capital stock or any other amount beyond what was necessary to qualify them as directors, the law presuming only that they were properly qualified for the positions in which they assumed to act.

Now let us see just what was held by the majority of the court:

In the first place, it was found as a matter of fact (p. 311)
343 that: "The deeds were authorized by the boards of directors of said respective companies, and were executed by the proper officers but were not ratified by the stockholders of said corporation," *i. e.*, there was no ratification in either of the methods outlined in the statute. That being so, the court had only to decide (p. 312) "whether the directors of said mining companies had power or authority to convey the property in the absence of a ratification by the stockholders as specified in the act of 1880," and it was held that they had no such power. This was the point decided, and no other, with the consequent corollaries (1) that the title did not pass in the absence of such ratification and (2) that the question might be raised "by any one who connects himself with the title of the corporation which owned the property, as well as by the stockholders thereof."

It not appearing that the signatory officers themselves owned two-thirds of the stock in each case (for the title was affected by the deeds of two operations), well might the court say (pp. 312–313), "Nor can the consent of the stockholders be presumed from the mere fact of the conveyance, whether under corporate seal or not, for such consent or "ratification" may be after the deed is executed and hence is not necessarily or presumptively involved in the execution of such deed."

The court, it will be noticed, by no means held that there could never be a case where the execution of the deed or fact of conveyance might not involve the consent or "ratification." It simply held that there was no presumption in the absence of extrinsic evidence. That extrinsic evidence in the shape of proof that the officers signing, themselves owned more than two-thirds of the stock and were therefore in a position to ratify according to statute, has never been passed on by the supreme court of California, though this court in the G. V. B. Mining Co. case, *supra*, has actually sustained a mortgage upon the ground of such extrinsic evidence alone.

344 The case of Pekin Mining Co. *v.* Kennedy, 81 Cal., 356, is not based upon any independent reasoning but rests entirely upon the authority of the McShane case. The court found (p. 359) that "there was no evidence offered however, to show that the deed had been authorized by the trustees of the corporation or that it had been ratified by two-thirds of the stockholders, nor was there any other proof of its execution." It was therefore held that the title remained in the company.

Said the court (p. 363):

"This result comes from the fact that no evidence was offered to prove that the deed was ratified by two-thirds of its stockholders as provided in section 1 of the act concerning mining corporations, which went into effect April 23, 1880 (Stats. 1880, p. 131). In McShane *v.* Carter, 80 Cal., 360, a majority of this court held that under

said statute a deed of a mining corporation of any part of its mine, not shown to have been so ratified, does not pass the title. Upon the authority of that case we therefore hold that the title to that part of the premises in contest now under discussion is still in the Oro Fino Mining and Milling Company and not in plaintiff."

In the Pekin case two very significant facts appear: (1) There was no authorization even by the directors, and (2) there was no evidence of ratification in either of the modes prescribed by the statute. This case, therefore, cannot be construed as antagonistic to the position assumed by this court in the G. V. B. Mining case, *supra*, or in fact as authority at all upon ratification other than by resolution, and there is no evidence of the extent to which the officers executing the deed were stockholders of their company.

It is true that the Oro Fino Company appears to have been a foreign corporation, but the question of the applicability of the statute to foreign corporations seems not to have been argued or discussed. That fact, however, makes no difference in the discussion of this point of our argument, which proceeds upon the theory
345 that, assuming the statute to relate to foreign corporations, its requirements have been satisfied.

In Granite Gold Mining Co. *v.* Maginnis, 118 Cal., 131 (at 136), it appears affirmatively that neither of the two modes of ratification provided for in the statute was attempted to be shown, the deed having been admitted in evidence "without proof of the consent or ratification of stockholders as required by the act of April 23, 1880."

Johnson *v.* California Lustral Co., 59 Pac., 595, shows also the entire absence of evidence going to prove either mode of ratification, and the court there lays down the liberal and salutary rule that the statute in question "must be enforced according to its intent," and not literally.

It seems to us, therefore, that this court is entirely free to apply to the case at bar the ruling enounced in the G. V. B. mining case with respect to the New York statute so strikingly similar to the act of April 23, 1880, and that a like construction of the latter act shows that the execution of the mortgage by Shoecraft and Littlefield together owning more than two-thirds of the stock of the Gold Hill Mining Company (Appellant's Brief, p. 39), is a compliance with the statute. Inasmuch as the case of McShane *v.* Carter, *supra*, does not dispose of this feature of the case, we submit that it is not an authority for a literal or any other construction of the statute upon the point now insisted upon.

II.

The act of 1880 cannot refer to foreign corporations in any aspect without regulating the internal affairs of such corporations.

The opinion of this court (p. 7) contains the following language:

346 "The constitution of California, article 12, section 15, declares that 'no corporation organized outside the limits of this State shall be allowed to transact business within this State on more

favorable conditions than are prescribed by law to similar corporations organized under the laws of this State.'

This constitutional provision declares the public policy of the State; and the supreme court having applied the provisions of section 1 of the statute under consideration to foreign corporations, and the words 'any mining corporation' in said section being broad enough to include foreign as well as domestic corporations, we are not at liberty to say that such was not the intention of the legislature because the other provisions of the act are made applicable solely to domestic corporations.

This brings the construction of the statute in harmony with the provisions of the constitution."

It is most earnestly and respectfully suggested that, independent of other defects growing out of it, such a construction of the statute is in effect a ruling that the title of the act of 1880 is equivalent in legislative intention to "An act for the further protection of stockholders in foreign and domestic mining companies."

The rule is well settled that where the constitution of the State provides (as in California, constitution, art. IV, § 24,) that each act of the legislature shall relate to but one subject which shall be expressed in the title, the effect is to make the title a part of the enactment.

Black on Interpretation of Laws, p. 175.
Coosaw Mining Co. *v.* South Carolina, 144 U. S., 550.

The title of the statute under discussion shows plainly an intention to protect a special class of persons, to wit: stockholders, against their corporation and its officers. By decision (McShane *v.* Carter, *supra*,) this act enures and is extended through the stockholders for whose express benefit it was enacted to judgment creditors of the corporation.

In other words, except for the existence and validity of an
347 act by its terms granting benefits to stockholders alone, judgment creditors would have no rights at all.

Now suppose this question had been raised by a stockholder of the Gold Hill Mining Company. No outsider would be a party to the issue. It would be a matter entirely between the stockholder and his corporation and its officers, and would depend upon his failure to obtain the benefit of certain corporate action (viz., ratification by two-thirds of the stockholders) under legislation designed for his protection in the orderly authorization of corporate acts. Would not this issue relate entirely to the internal management of the corporation? We respectfully submit that the question carries its own answer. The ruling that the benefits of this act may be extended to judgment creditors simply permits them to litigate this same question and to say that because stockholders have not been protected the conveyance or mortgage in question is ineffectual as to them, and, therefore, the title of the land remains as before the execution of the instrument and judgment creditors may reach it. Shortly, the matter litigated, is the ineffectual protection of the stockholders under the statute, and it makes no difference who obtains

the ultimate benefit of the decision; the question upon which it rests remains the same and as we respectfully insist, relates entirely to the internal management of the corporation's affairs. The court will note the difference between such an irregularity and the following cases: (1) The omission on the part of the foreign corporation to take some action in which third parties are at the time concerned (even the filing of a particular paper, which is not required by the act of 1880) in the State where the property is located; (2) the omission to properly execute the mortgage or deed under the laws of the State where the property is situated, and (3) where there is a conflict of law as to the effect of the instrument as a mortgage or deed and the devolution of property thereunder.

Under these three heads or one of them fall the cases of
348 Brine *v.* Insurance Co., 96 U. S., 627; McGoon *v.* Scales, 9 Wall, 23; Bank *v.* Kansas City Bank, 136 U. S., 223; Etheridge *v.* Sperry, 139 U. S., 266; Cutler *v.* Huston, 158 U. S., 223; Wilson *v.* Perrin, 11 C. C. A., 71, and others. In no one of these cases does the right of the stockholder as against his corporation by reason of its failure to properly manage its meetings or other internal affairs form the basis of the issue litigated, and it is respectfully suggested that they are not, therefore, authority against the appellant.

Following the presumption that the stockholders of corporations hold their meetings in the State of their domicile it becomes even more apparent that the omission complained of should have been corrected by corporate action in that jurisdiction, and such action can certainly not be considered to be effected by limitations upon the "transaction of business" in another State where some of the corporation's property may be located but where no meetings of its stockholders or directors need be held.

The transaction or carying on of the business of a corporation implies its dealings wiih third parties, otherwise the rule of the Supreme Court of the United States laid down in Bank of Augusta *v.* Earle, 13 Peters, 519, to the effect that a corporation organized under the laws of one State may transact business beyond the borders of that State would be an absurdity; for all meetings held at the place of its domicile even those relating to its organization would be construed to be the transaction of business in a foreign State where it might have property. This court having held that the legislature has no power to regulate the internal affairs of foreign corporation-, it seems to us that the constitutional provision of the State of California relating to the transaction by foreign corporations of their business in that State cannot contemplate the limitation or regulation of acts as resolutions, &c., done outside the State; and it therefore is not material here. It is of course perfectly clear that a
349 "ratification" perfected in a foreign State by resolution or written consent of two-thirds of the stockholders would amply satisfy the statute.

It seems to us that the court failed to note that the rights of judgment creditors are not independent and co-ordinate with those of stockholders, but are derived through the rights of the latter class.

In view of these considerations we respectfully urge that the Pekin

Mining Co. case, *supra*, which appears to have been decided entirely upon the authority of the McShane case and without any discussion of the difference between foreign and domestic corporations, cannot be held to subvert the rule enounced both by this court in this case and the California court in the case of Miles *v.* Woodward, 115 Cal., 308, that the legislature has no power to legislate upon the internal affairs of foreign corporations.

III.

The constitution of California (art. IV, sec. 24) is prohibitive of any construction of the act of 1880, which would include foreign corporations within its provisions.

The constitution of 1880 in effect at the time that the act of April 23, 1880, was passed, provided at section 24 of article IV, that "every act shall embrace but one subject, which subject shall be expressed in its title."

This court, it seems to us, in holding that the first section of the act of 1880, referred to both foreign and domestic corporations and the following sections only to domestic corporations, has given an effect to the statute not authorized by the constitution. We respectfully insist that in order to conform to the constitutional requirement the statute should be homogeneous and refer to the
350 same class of corporations all the way through the various sections into which it is subdivided.

Your petitioner, therefore, prays a rehearing of this cause and that upon such rehearing the decree of the circuit court be reversed and a foreclosure directed.

Respectfully submitted.

THOMAS S. FORD,
Solicitor for Petitioner.

C. WALTER ARTZ,
EDWARD J. McCUTCHEN.
Of Counsel.

I, C. Walter Artz, do hereby certify that I am one of the counsel for the appellant in the above-entitled cause, and that the foregoing petition is in my judgment well founded, and is not interposed for delay.

C. WALTER ARTZ.

(Endorsed:) Petition for rehearing. Filed June 12, 1900. F. D. Monckton, clerk.

351 At a stated term, to wit: the October term A. D. 1900 of the United States circuit court of appeals for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Monday the fifteenth day of October in the year of our Lord one thousand, nine hundred.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable Thomas P. Hawley, district judge.

FREDERICK WILLIAMS, Appellant,
vs.
GEORGE C. GAYLORD ET AL., Appellees. } No. 581.

Ordered petition for a rehearing heretofore filed herein denied.

352 At a stated term, to wit: the October term A. D. 1900 of the United States circuit court of appeals for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Wednesday the seventeenth day of October in the year of our Lord one thousand, nine hundred.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable Thomas P. Hawley, district judge.

FREDERICK WILLIAMS, Appellant,
vs.
GEORGE C. GAYLORD ET AL., Appellees. } No. 581.

Upon motion of Page, McCutcheon, Harding & Knight, Esquires, on behalf of appellant,

Ordered issuance of mandate herein stayed thirty days from date.

353 At a stated term, to wit: the October term A. D. 1900 of the United States circuit court of appeals for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Monday the fifth day of November in the year of our Lord one thousand, nine hundred.

Present: The Honorable William B. Gilbert, circuit judge; Honorable William W. Morrow, circuit judge; Honorable John J. De Haven, district judge.

FREDERICK WILLIAMS, Appellant,
vs.
GEORGE C. GAYLORD ET AL., Appellees. } No. 581.

Upon motion E. J. McCutcheon, Esquire, ordered issuance of mandate herein stayed thirty days from the 16th instant.

354 United States Circuit Court of Appeals for the Ninth Circuit.

FREDERICK WILLIAMS, Appellant,
vs.
GEORGE C. GAYLORD ET AL. } No. 581.

Clerk's Certificate.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing twenty-six (26) pages, numbered from one (1) to twenty-six (26), inclusive, to be true copies of the following documents filed and minute orders entered in the above-entitled cause, viz:—order of submission, order permitting addition of "note" to printed record, opinion, decree,

order of May 24, 1900, staying issuance of mandate, petition for a rehearing, order denying petition for a rehearing, order of October 17, 1900, staying issuance of mandate, and order of November 5, 1900, staying issuance of mandate, as the originals thereof remain and appear of record in my office.

Seal United States Circuit Court of Appeals, Ninth Circuit.

Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 22nd day of November, A. D. 1900.

F. D. MONCKTON, *Clerk.*

{ Ten-cent United States internal-revenue stamp, canceled Nov. 22, 1900. F. D. M., cl'k. }

355 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the ninth circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which Frederick Williams is appellant and George C. Gaylord, Charles E. Maddrill, and Dwight T. Rolfe are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the northern district of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed
356 into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 14th day of February, in the year of our Lord one thousand nine hundred and one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

357 [Endorsed:] File No. 17,988. Supreme Court of the United States. No. 503, October term, 1900. Frederick Williams *vs.* George C. Gaylord *et al.* Writ of certiorari. No. 581 U. S. circuit court of appeals 9th circuit Filed February 21, 1901. F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit.

358 United States Circuit Court of Appeals, Ninth Circuit.

FREDERICK WILLIAMS, Appellant,
against
GEORGE C. GAYLORD, CHARLES E. MADDRILL, and DWIGHT T. Rolfe.

It is stipulated and agreed that the certified copy of the transcript of record on file in the Supreme Court at Washington be taken as a return to the writ of certiorari heretofore allowed by that court herein.

Dated, February 16th, 1901.

THOMAS S. FORD,
Solicitor for Appellant.
CURTIS H. LINDLEY,
HENRY EICKHOFF,
Solicitors for Appellees.

(Endorsed:) Stipulation as to return to writ of certiorari. Filed Feb. 21, 1901. F. D. Monckton, clerk.

359 United States Circuit Court of Appeals for the Ninth Circuit.

FREDERICK WILLIAMS, Appellant,
vs.
GEORGE C. GAYLORD, CHARLES E. MADDRILL, and Dwight T. Rolfe, Appellees. } No. 581.

Certificate of Clerk C. C. A. to Stipulation.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the next preceding page to be a full, true and correct copy of a stipulation as to return to writ of certiorari filed in the above-entitled cause February 21, 1901, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 4th day of March, A. D. 1901.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

{ Ten-cent United States internal-revenue stamp, canceled Mar. 4, 1901. F. D. M., clerk. }

360 United States Circuit Court of Appeals for the Ninth Circuit.

FREDERICK WILLIAMS, Appellant,
vs.
GEORGE C. GAYLORD, CHARLES E. MADDRILL, and DWIGHT T. Rolfe, Appellees. } No. 581.

Return to Writ of Certiorari.

By direction of the judges of the United States circuit court of appeals for the ninth circuit I, Frank D. Monckton, clerk, in obedience to the foregoing writ of certiorari issued out of the honorable the Supreme Court of the United States and addressed to the honorable the judges of the United States circuit court of appeals for the ninth circuit, commanding them to transmit to the said Supreme Court the record and proceedin-s in the above-entitled cause, do attach to the said writ a certified copy of a stipulation entered into between the attorneys for the several parties in said cause on the 16th day of February, A. D. 1901, the original of which stipulation is on file and of record in my office, and do certify the same as due return to said writ.

In testimony whereof, I have hereunto set my hand and affixed the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 4th day of March, A. D. 1901.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

{ Ten-cent United States internal-revenue stamp, canceled Mar. 4, 1901. F. D. M., clerk. }

361 [Endorsed:] File No. 17,988. Supreme Court U. S. October term, 1901. Term No. 208. Frederick Williams, petitioner, *vs.* Geo. C. Gaylord *et al.* Writ of certiorari and return. Filed Mar. 13, 1901.

362 Supreme Court of the United States.

FREDERICK WILLIAMS, Petitioner,
against
GEORGE C. GAYLORD, CHARLES E. MADDRILL, and DWIGHT T. Rolfe, Respondents.

It is hereby stipulated and consented that the testimony of Calvin Littlefield and Frederick Williams extending from page 128 to page 174 of the printed record of this cause in the United States circuit court of appeals for the ninth circuit, be corrected as follows: (the paging hereinafter referred to being that of the said circuit of appeals record.)

Page 128, line 14. Strike out the words "since its organization

June 25th, 1890" and insert in lieu thereof "since the election of permanent officers, July 10th, 1890. Prior to that I had possession of the records."

Page 134, line 27. Strike out the figures "10" between "1" and "No." and insert in lieu thereof "17." Also strike out figures "10" between "2" and "total" and insert in lieu thereof "17: No. 3, 2; No. 4, 4."

Page 134, line 28. Strike out the word "twenty" at beginning of line and insert in lieu thereof the word "forty." Also strike out "one" between words "of" and "bond" and insert in lieu thereof "two" and add "s" to the word "bond."

Page 134, line 29. Strike out the word "one" between "received" and "bond" and insert "two" in lieu thereof and add "s" to succeeding word "bond."

363 Page 141, line 19. Strike out the word "seven" after the word "Twenty."

Page 149, lines 5, 6 and 7. Strike out these.

Page 152, line 26. Strike out the figure "1" between the word "July" and "1890" and insert in lieu thereof "10."

Page 156, line 14. Strike out "'94" and insert in lieu thereof "'93."

Page 172, line 5. Strike out the word "twenty" between the words "and" and "as" and insert in lieu thereof the word "two."

Page 172, line 10. Strike out the word "twelve" between "bought" and "and" and insert in lieu thereof the word "two."

Page 173, line 5. Strike out the words "that I received" between the words "date" and "the" and insert in lieu thereof the word "of."

And it is hereby stipulated that the record to be printed in this cause in this court, shall be made in accordance with the above-mentioned corrections.

Dated August 28th, 1901.

C. WALTER ARTZ,
Counsel for Petitioner.
CURTIS H. LINDLEY,
Counsel for Respondents.

364 [Endorsed:] U. S. Supreme Court. Frederick Williams, petitioner, against George C. Gaylord and others, respondents. Stipulation correcting record. C. Walter Artz, counsel for petitioner.

365 [Endorsed:] File No. 17,988. Supreme Court U. S., October term, 1901. Term No. 208. Fred'k Williams, petitioner, *vs.* George C. Gaylord *et al.* Stipulation to correct record. Filed Sept. 6, 1901.

FILED
DEC 10 1900
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1900.

No. ~~503~~ 208

FREDERICK WILLIAMS,
Petitioner,
vs.
GEORGE C. GAYLORD, CHARLES E. MADDRILL and DWIGHT T. ROLFE,
Respondents.

Petition to Supreme Court under the Act of March 3, 1891, for writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Supreme Court of the United States:

YOUR PETITIONER, FREDERICK WILLIAMS, respectfully presents to this Court this his petition for a writ of *certiorari* addressed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding said Court and the Clerk thereof to certify to this Court the record and proceedings in the case in said Court, wherein your petitioner, the said Frederick Williams, is appellant, and the respondents, the said George C. Gaylord, Charles E. Maddrill and Dwight T. Rolfe, are appellees, together with its opinion therein for the review and determination of said case by this Court, as provided in Section 6 of the Act of Congress, approved March 3, 1891.

Your petitioner states the facts in this behalf as follows:

On the 23d day of November, 1897, your petitioner as complainant filed his bill in equity in the Circuit Court of the United

States for the Northern District of California against The Gold Hill Mining Company, a corporation of the State of West Virginia, and the respondents above-named, to foreclose a certain first mortgage, dated July 1st, 1890, made and executed by said mining company to G. Livingston Morse, Trustee, to secure an issue of $50,000 of its first mortgage bonds. Said Morse having died, your petitioner was under the provisions of said mortgage duly elected as his successor in such trusteeship.

The bill seeks a foreclosure of a certain mine and lot of mining ground located in Nevada County, California.

The mining company made default in pleading and a decree *pro confesso* was entered against it. The respondents, judgment creditors of the mining company, answered the bill, setting up, among other things, that the mortgage and the bonds secured thereby were not valid because they had not been properly authorized under the provisions of an Act of the Legislature of the State of California approved April 23, 1880, entitled "An Act for the further protection of stockholders in mining companies," providing that a ratification by two-thirds in amount of the stockholders of any such company, either by consent in writing, duly acknowledged, or by resolution passed at a stockholders' meeting duly called for the purpose should be prerequisite to the action of the directors in mortgaging the property of the corporation.

A final decree was entered in favor of the judgment creditors, dismissing the bill of complaint upon the 26th day of September, 1899, certain pleas of the respondents having been previously overruled.

Thereupon your petitioner was allowed and took his appeal from said final decree to the said United States Circuit Court of Appeals for the Ninth Circuit and the said Circuit Court of Appeals affirmed the decree of the Circuit Court by decree entered on the 14th day of May, 1900.

On petition for rehearing filed by the said Frederick Williams, your petitioner, the Circuit Court of Appeals adhered to its decision, and on October 17, 1900, denied said motion.

The printed transcript of record and of opinions in the said cause are herewith submitted to this Court.

Your petitioner states that the said decree of the Circuit Court of Appeals and the said decree of the Circuit Court are contrary to law and the decisions of this Court, among other grounds, because

they proceed upon the theory and decide that the decision of the State Court permitting judgment creditors to set up and avail themselves of the benefit of an Act exclusively designed and expressly stated to be for the benefit of stockholders in mining companies, is binding upon the Federal Courts as a construction of a State Statute by the highest Court of said State as against a foreign corporation, the trustee of its mortgage and the *bona fide* holders of its negotiable bonds; when in fact, as your petitioner represents, said question is extrinsic to any construction of said statute, relates to general commercial law, and has been long settled in a manner favorable to persons occupying the position of your petitioner and the bondholders represented by him by numerous and prior decisions, some of which were rendered or concurred in by members of this Court then sitting therein, in a State Court or at Circuit.

Your petitioner also shows that the said mortgage was signed by officers owning more than two-thirds of the stock of said mining company and consenting thereto, and said mortgage was acquiesced in and accepted as valid by the stockholders of said company.

In addition to the grounds of review shown herein and in the record and brief of the petitioner, the fact that the matters involved in this case relate not to mere questions of local law or importance, but to a question of general and commercial law affecting vast interests of foreign corporations in various States of the Union, and the safeguards surrounding owners of their negotiable bonds authorized by the laws of the State creating the corporation as against subsequent creditors, whether by judgment or otherwise, renders this case eminently one in which a writ of *certiorari* should be granted.

This case, moreover, involves the large amount of $50,000 of bonds, with interest thereon nearly equal in amount, owned by various persons, who gave full value therefor.

Wherefore, your petitioner prays that, upon the grounds and for the reasons appearing in the record of said cause and in the brief in support of this petition, this Court issue such writ of *certiorari*, commanding said United States Circuit Court of Appeals and the Clerk thereof to certify to this Court the record and proceedings in said case in said Court, with its opinion therein, for the review and determination of said case by this Court, as provided in Section 6 of the Act of Congress of March 3d, 1891; and your petitioner will ever pray.

C. WALTER ARTZ,
Attorney for Petitioner.

No. 208.

Br. of Artz for Petitioner

Filed Jan. 21, 1901.

Office Supreme Court U.S.
FILED
JAN 21 1901
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM 1900

NO. 503

FREDERICK WILLIAMS,

Petitioner

against

GEORGE C. GAYLORD, CHARLES E. MADDRILL and DWIGHT T. ROLFE

Respondents

BRIEF FOR PETITIONER ON APPLICATION FOR WRIT OF CERTIORARI.

C. WALTER ARTZ,
For Petitioner

Supreme Court of the United States.

OCTOBER TERM 1900

FREDERICK WILLIAMS,
Petitioner,
AGAINST
GEORGE C. GAYLORD, CHARLES E. MADDRILL AND DWIGHT T. ROLFE,
Respondents.
No. 503

BRIEF ON BEHALF OF PETITIONER IN SUPPORT OF APPLICATION TO THIS COURT FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Statement.

The suit was brought by the petitioner the trustee of a first mortgage made and executed by the Gold Hill Mining Company, a corporation of the state of West Virginia covering certain mining property located in Nevada county in the state of California, to obtain a decree of foreclosure and sale; and the respondents with the firm of Martin Brothers & Muir were joined as defendants additional to the

Company upon the ground that they had or claimed to have some interest in or lien upon the premises sought to be foreclosed either as judgment creditors or otherwise; which interest or lien, if any, the complainant however averred was subsequent and subordinate in time and degree to the lien of the mortgage sued upon.

Bill Paragraph VIII; Record p. 9.

The Company and said Martin Brothers & Muir defaulted in pleading and a decree *pro confesso* was entered against them.

Record p. 33.

The respondents are judgment creditors whose judgments were entered long after the record of the mortgage in suit, i e, in the years 1896 and 1897.

Record pp. 43, 52, 55, 71, 85, 88, 245, 268, 283.

The judgment creditors filed pleas and also answered the bill.

Record pp. 34, 37, 48.

The pleas were overruled because the answers were on file and without a consideration of the merits.

Opinion: Record pp. 101-103.

Proofs having been taken (Record pp. 127-196) and the answers of the respondents having been amended (Record pp. 77, 91) the Circuit Court after final hearing brought on upon August 14, 1899 handed

down an opinion, on August 28, 1899, upon which a decree was entered on September 26, 1899, dismissing the bill.

Record pp. 97, 98.

The bill shows the authorization of the mortgage and bonds to the extent of $50,000; the execution and delivery of the mortgage; the description of the mining and other property conveyed in the mortgage and located in the county of Nevada and state of California; the due formal execution and record of the mortgage; the acceptance of the trust by the trustee; the execution and delivery of the bonds authorized to be issued; the fact that they have been issued and are now outstanding; the default of the Mining Company in interest on the 1st day of July, 1893, and the subsequent default in principal under the terms of the mortgage; the existence of subsequent liens held by the respondents; the substitution of the petitioner as trustee in the stead of G. Livingstone Morse, who was originally selected and who accepted that position; and the fact that no other proceedings for the collection of the bonds secured by the mortgage have been had.

Bill. Paragraphs II-X; Record pp. 3-10.

The Defence of the Judgment Creditors.

The defence arising upon the amended answers of the *judgment creditors* consisted in the main of an allegation that the mortgage had not been authorized in conformity to the provisions of the first section of the Act of the Legislature of the State of California

passed April 23, 1880 and entitled "An Act for the further protection of *stockholders* in mining companies" requiring the assent of two thirds in amount of the stockholders of any mining company as a prerequisite to the sale, leasing or mortgaging of its land.

Amended Answers: Record pp. 68, 81-83.

UPON THIS DEFENCE THE FOLLOWING QUESTIONS AROSE:

1. Whether *judgment creditors* could under the circumstances take the benefit of the Statute mentioned and be heard to question the validity of the mortgage upon that ground.

2. Whether the Circuit Court was obliged to follow the decision of the Supreme Court of California holding that the question can be raised by judgment creditors.

3. Whether the Statute applied to foreign corporations.

4. Whether, if that Statute does apply to the defendant Mining Company, there was a sufficient authorization or ratification of the mortgage thereunder.

5. Whether independent of technical compliance with the terms of authorization or legal ratification laid down in the Statute mentioned, the mortgage and bonds which it secures have been validated by acquiescence and retention of consideration on the part of the Mining Company.

Under the denials of the amended answers the

complainant was also put to proof of the fact of the execution and delivery of the bonds and mortgage for value received by the Mining Company.

Testimony of Littlefield and Williams.

Record pp. 128-174.

An issue was also raised as to the proper formal execution of the mortgage but this was abandoned at the hearing before the Circuit Court of Appeals.

The Circuit Court did not pass upon all of the questions presented but decided:

A. That the Statute of 1880 applied to foreign corporations owning mining ground in California, by reason of the Constitutional provision (Constitution of California. Art. XII. §15) to the effect that "no corporation organized outside the limits of this State shall be allowed to transact business in this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State" and declares the public policy of the State.

B. That the statute in question does not refer to the internal management of mining corporations and is not therefore objectionable when applied to foreign corporations.

C. That the mode of ratification indicated in the statute is essential and exclusive.

D. That the stockholders of the Mining Company did not ratify the mortgage as required by the statute.

E. That the judgment creditors are not estopped to set up absence of ratification under the statute.

F. That the decisions of the Supreme Court of the State of California to the effect that judgment creditors may raise the question are not enunciatory of general or commercial law but are constructive of the statute and bind the Federal tribunals.

The Court considered none of the other points raised but dismissed the bill.

Decree. Record p. 97.

Upon appeal the Circuit Court of Appeals for the Ninth Circuit held

1. That the ruling of the State Supreme Court to the effect that judgment creditors could plead and take the benefit of the statute was a construction thereof and binding upon the Circuit Court.

2. That the statute related as to its first section to corporations foreign as well as domestic while as to its third and fourth sections it related only to domestic corporations.

3. That by decision of the Supreme Court of California a literal compliance with the first section of the statute was essential to the validity of a mortgage upon mining property; and that no such compliance was shown in the case at bar.

Record pp. 316-320.

A petition for rehearing was filed June 12, 1900, and denied October 15, 1900.

Record pp. 321-327; 328.

This petition, stating briefly the grounds therefor invited the Courts attention to the following propositions:

1. The opinion herein fails to distinguish between a ratification of the mortgage by a resolution of the stockholders and a "writing signed and acknowledged by such stockholders."

Record p. 321.

2. The Act of 1880 cannot refer to foreign corporations in any aspect without regulating the internal affairs of such corporations.

Record p. 324.

3. The Constitution of California is prohibitive of any construction of the Act of 1880 which would include foreign corporations within its provisions.

Record p. 327.

The petitioner now applies for a writ of certiorari and in support of this application invites attention to the following:

ARGUMENT.

I.

The decision of the Supreme Court of California to the effect that judgment creditors may take advantage of the Statute of 1880 is not binding upon the Federal Courts either as a construction of that Statute or determinative of a local rule of property.

The statute in question is entitled: "An act for

the further protection of stockholders in mining companies" and Section 1 thereof (until amended subsequent to the accrual of the rights of the parties hereto) read as follows:

"It shall not be lawful for the directors of any mining corporation to sell, lease, mortgage or otherwise dispose of the whole or any part of the mining ground owned or held by such corporation, nor to purchase or obtain, in any way, any additional mining ground, unless such act be ratified by the holders of at least two thirds of the capital stock of such corporation. Such ratification may be made either in writing signed and acknowledged by such stockholders, or by resolution duly passed at a stockholders meeting called for that purpose."

Stats. Cal. 1880 p. 131.

Statutes of this character are common to many other of the States and although usually without title and merely forming sectional portions of revised or compiled laws, they have universally been held both by Federal and State Courts to be intended for the protection and security of the stockholders alone, who by their own action may be estopped to question the validity or regularity of the proceedings; so that it is necessary that even a stockholder should dissent in order that he may raise the question.

The State may in a proper case by direct proceeding avail of the objection but it can never be raised by creditors whether their claims have been reduced to judgment or not.

Hervey v. Ill., &c. Ry. Co., 28 Fed. 169.
(Mr. Justice HARLAN at Circuit in Illinois.)
Thomas v. Citizens Ry. Co., 104 Ill. 462.

Beecher Marquette &c., R. M. Co., 45 Mich. 103. (Per COOLEY, J.)

The Vigilancia 68 Fed. 781.

(U. S. D. C. S. D. N. Y. Affirmed U. S. C C. A. 2nd Circuit: 73 Fed. 452.)

Greenpoint Sugar Co. v. Whiting, 69, N.Y. 328.

Rochester Savings Bk. v. Averell, 96 N. Y. 467.

Star P. Co. v. Andrews, 9 N. Y. Supp. 731.

Campbell v. Argenta Co., 51 Fed. 1. (Circuit Court, Dist. of Montana.)

Boston &c. Co. v. Montana &c. Co., 89 Fed. 529. (Circuit Court: Dist. of Montana.)

Boyce v. Montauk & Co., 37 West Va. 73.

Coe v. East &c. Ry Co., 52 Fed. 531.
(Circuit Court, Northern Dist. of Alabama,)

Alabama &c. Co. v. McKeever, 20 S. Rep. 84. (Supreme Ct. Alabama.)

Antietam Paper Co. v. Chronicle &c. Co., 115 N. C. 143.

Gordon v. Preston, 1 Watts 385.

Cook on Corporations. (4th Ed.) §808.

Short on Railway Bonds and Mortgages, §181.

Said Mr. Justice HARLAN in the case of Hervey v. Illinois &c. Ry Co., 28 Fed. 169 (at pp. 173-174):

"Creditors of the before mentioned railroad companies, who are parties herein, claim that in the ex-

ecution of the mortgages in question certain requirements of the Statues of Illinois were not observed, and consequently that each of those instruments are void, ... The objection under consideration can have no application to any one of the sectional mortgages except that executed by the Paris & Terra Haute Railroad company, which was organized after the passage of the Act of 1872. But it cannot avail the parties making it for several reasons one of which is, that as the Paris & Terre Haute Railroad Company admits the execution and delivery of the mortgage, it must, *as between the company and its creditors*, be deemed a valid instrument. The provision in the Act of 1872, making the assent of a given number of stockholders essential to the validity of a mortgage is primarily, if not exclusively, for the benefit of stockholders, if it be conceded that stockholders of a railroad corporation formed under the act of 1872, could, as against *bona fide* holders of bonds secured by a mortgage executed by such corporation, defeat a mortgage not executed with the expressed assent of the requisite number of stockholders, it does not follow that the creditors of the corporation could raise any such question. Under the circumstances disclosed by the record, the stockholders of the Paris & Terre Haute Railroad Cempany are estopped to say that the mortgage is not a valid security, according to its terms for the payment of the bonds intended to be secured by it. Much less can creditors urge such an objection particularly when the State has not, by any direct proceeding, questioned the vality of the mortgage under the act of 1872."

Again, if we assume for purposes of argument that the Mining Company should be considered as a domestic corporation the case of Campbell v. Argenta etc. Co. 51 Fed. 1, presents practically the same situation.

There the question of compliance with the Montana statute, as precise at least as the Act of 1880, was sought to be raised by judgment creditors.

Said the Court upon this subject (pp. 8-9):

"The contract being a voidable one, the question arises as to who can take advantage of any defect in entering into the same. The rule that is established by the statute requiring a meeting of stockholders, etc., and the giving of their consent to the making of a mortgage was for the benefit of the stockholders of the corporation executing the bound by the rule expressed in *Railway Co. v. McCarthy*, (96 W. S. 258) and in accordance with it would have to hold that even the corporation and stockholders in this case would be estopped from asserting that the mortgage was void, although it might be held that it was beyond the power of the corporation to execute the same. But holding, as I do, that the mortgage was only a voidable contract, I have no difficulty in maintaining that the corporation and the stockholders in this case would be estopped from denying its validity. The bonds sued on in this case were the consideration for the property embraced in the mortgage; neither the corporation nor the stockholders have ever expressed any desire to disaffirm that contract. The contract was entered into with the knowledge of the stockholders; the corporation held and enjoyed the property so obtained; hence it would be a wrong to allow the corporation to disaffirm this mortgage, and, if neither the stockholders nor the corporation could now object to this mortgage, *much less could the creditors of the Argenta Company object to the validity thereof.*"

It is thus easy to see the reasons for the rule so generally applied. It is but one phase of the doctrine, well established in this Court, that no one but the state or a dissenting stockholder may avail of an *ultra vires* act particularly where the defect consists in the failure on the part of a corporation or its officers, directors or stockholders to comply with some formality prerequisite to the orderly performance of the function in question.

Jones v. Guaranty &c. Co. 101 U. S. 622.
Railroad Co. v. Ellerman 105 U. S. 166.

St. Louis &c. R. R. Co. v. Terre Haute &c. R. R. Co. 145 U. S. 393, 403.

Zabriskie v. R. R. 23 How. 381, 398.

Central Trans Co. v. Pullman's &c. Co. 139 U. S. 24, 42, 60.

Davis v. Old Colony R. R. 131 Mass. 258, 260.

See also Sioux City &c. Co. v. Trust Co. 82 Fed. 124, (U. S. C. C. A. 8th Circ.)

In Jones v. Guaranty &c. Co. 101 U. S. 622 creditors sought to attach a mortgage upon after acquired property as *ultra vires*. Said Mr. Justice SWAYNE of the mortgage in question (p. 628):

"If the one here in question be *ultra vires*, no one can take advantage of the defect of power involved but the state. As to all other parties it must be held valid and may be enforced accordingly. *Silver Lake Bank v. North* 4 Johns (N. Y.) Ch. 370; *National Bank v. Matthews* 98 U. S. 621. In the latter case this subject was fully examined.

"A corporation can act only by its agents. If there were any such technical defect as is claimed touching the execution of this mortgage it has been cured by acquiescence and ratification by the mortgagor.

"*No one else can raise the question. All other parties are concluded. Gordon v. Preston* 1 Watts (Pa.) 385.

"Where money had been obtained by a corporation upon its securities which were irregular and *ultra vires*, but the money was applied for the benefit of the company, with the knowledge and acquiescence of the shareholders, the company and the shareholders were estopped from denying the liability of the company to repay it. And the same result follows where such securities are issued with the knowledge of the shareholders so far as the money thus raised is applied for the benefit of the company. *In re Cork & Yonghal Railway Co.* Law Rep. 4 Ch. 748.

"A court of equity abhors forfeitures and will not

lend its aid to enforce them. *Marshall v. Vicksburg* 15 Wall 146. Nor will it give its aid in the assertion of a mere legal right contrary to the clear equity and justice of the case. *Lewis v. Lyons* 13 Ill. 117."

This case and Railroad Co. v. Ellerman 105 U. S. 166 were both decided several years before the California Supreme Court decided the case of McShane v. Carter 80 Cal. 310, hereinafter referred to.

In the recent case of St. Louis &c. Railroad v. Terre Haute &c. Railroad 145 U. S. 393 this Court speaking through Mr. Justice GRAY say (at pp. 402-403.)

"The plaintiff relies on the Statute of Illinois of February 16, 1865 (in force at the date of this contract, but since repealed by the Revised Statutes of 1874) by which it was enacted that "it shall not be lawful for any railroad company of Illinois, or for the directors of any railroad company of Illinois, to consolidate their road with any railroad out of the State of Illinois, or to lease their road to any railroad company out of the State of Illinois, or to lease any railroad out of the State of Illinois, without having obtained the written consent of all of the stockholders of said roads residing in the State of Illinois, and any contract for such consolidation or lease which may be made without having first obtained said *written* consent, signed by the resident stockholders in Illinois, *shall be null and void*"; and it was provided "that nothing in this act shall be so construed as to authorize the consolidation of any of said railroads with railroads out of the State of Illinois" Illinois Public Laws of 1865 p. 102.

Although this Statute in terms declares that any such lease made without the written consent of the Illinois stockholders, "shall be null and void," it would seem to have been enacted for the protection of such stockholders alone, and intended to be availed of by them only. It did not limit the scope of the powers conferred upon the corporation by law an excess of which cauld not have been ratified or made good by estoppel; but only prescribed regu-

lations as to the manner of exercising corporate powers, compliance with which the stockholders might waive, or the corporation might be estopped by lapse of time or otherwise to deny." (Citing numerous cases.)

To the same effect and referring to a statute like that under discussion, see the admirable opinion of Judge COOLEY in Beecher v. Marquette, &c., Co., 45 Mich. 103.

Notwithstanding this overwhelming weight of authority the Supreme Court of California by a divided Court three judges only sitting and both of those concurring being Commissioners appointed by law to assist the regular judges, decided the case of McShane v. Carter (80 Cal. 310) to the effect that judgment creditors might set up the Statute of 1880 as against the prior grantee of a domestic corporation. This decision was afterward in Pekin Mining Co. v. Kennedy (81 Cal. 356) applied without independent reasoning to the case of a grantee of a foreign corporation, which in fact although not so stated in the report was subject to the provisions of a similar statute in the State of its domicile (Illinois).

We submit that the decision in the *McShane Case* does not operate to construe the statute nor to enunciate a local rule of property and that therefore it is not effective to control the action of the Federal Courts in this case.

A. No statutory construction is involved.

Upon the proof before it the Supreme Court of California took this position in the following language with respect to the meaning and effect of the statute (80 Cal. 312):

"In our opinion the directors of mining corporations have no power or authority to convey the mining ground without the consent of holders of two thirds of the stock, given as described in the Act."

So far there can be no doubt that the Court construed the act. But the Court then proceeds to draw the following *conclusions.*

(1) "*And it follows* without such consent the title does not pass."
(2) "*And if this be so,* the question can be raised by anyone who connects himself with the title of the corporation which owned the property, as well as by the stockholders thereof."

Why does this second conclusion follow? Certainly not from anything contained in the act itself, for upon this point it is absolutely silent and *there is nothing to construe or interpret.* It must depend upon the relation which to the Court's mind existed between judgment creditors ~~and their~~ of a corporation, on the one hand and its officers and stockholders on the other. The Court does not in the slightest degree intimate that there are any terms in the statute which under the well known rules of construction would indicate that the Legislature meant to include judgment creditors among the beneficiaries of the statute. The conclusion that they may raise the question is purely a conclusion not even derived directly from the ruling of the Court in the construction of the statute to the effect that in the absence of the ratification prescribed the directors "had no power to convey;" but is deduced as a sort of sub-conclusion of the conclusion (totally unwarranted under St. Louis &c. R. R. v. Terre Haute &c. R. R. 145 U. S. 403) that "without such consent the title does not pass."

With all due respect it is submitted that this conclusion so directly at variance with the great weight of authority and particularly so because of the plain and direct language of the title of the act, can in no sense be held to be a construction of the statute and therefore binding upon the Federal Courts. It is in fact and in law *a decision that judgment creditors are not estopped* to avail themselves of acts not even heinous enough to be *ultra vires* the corporation but merely irregular and beyond the power of the officers performing them. That this is a matter of general law seems scarcely more subject to argument than that the conclusion reached is directly contrary to the principles laid down by this Court as well as by the State and Federal Courts generally.

We may add that we do not think that the decisions of the State Courts of California to the effect that judgment creditors may in any case be considered beneficiaries under an act by its title limited to the "further protection of *stockholders*," are binding upon the Federal Courts; and it seems to us that the Circuit Court of Appeals failed to distinguish between a decision of the State Court construing the terms outlining the effect of the statute *as enacted* and a decision declaring that certain other persons not mentioned or referred to in the statute, may by reasons of relations existing between them and the stockholders *under general principles of corporation law*, become beneficiaries of the statute under consideration. We submit that a case of the latter class does not construe a statute or establish a rule of property, but

is merely a decision upon the general law of corporate relations.

In Sawyer v. Oakman (1 Lowell 134 Fed. Case No. 12,404) it was held that the effect which the statute of Massachusetts prohibiting work on the Lord's Day under a penalty should have on the rights of the parties to a collision cause pending in the District Court, one of whom has violated the act in moving his vessel on that day, is not a question of the construction of a statute *but of the application of general rules of law to the case of a person who has violated such a statute*, and the District Court must follow the decisions of the Supreme Court of the United States, and not those of the State tribunals.

Said LOWELL, J. (21 Fed. Cases 578):

"Now to the extent of holding that work done in contravention of the statute is illegal it may be that the local law should govern, but the statute is silent concerning the legal consequences of doing such an act excepting to the extent of the penalty directly imposed. The effect which it may have on the wrong-doer's standing as regards third persons is no part of the construction of the statute but the application of a general principle of law."

This case was affirmed by this Court in an opinion not reported (Reporters note, 21 Fed. Cas. 578) and its reasoning rests in great part upon that of Phila. &c. R. R. v. Philadelphia &c. Towboat Co. 23 How. 209.

In Bucher v. Cheshire R. R. Co. 125 U. S. 555 this Court (Mr. Justice FIELD and Mr. Justice HARLAN dissenting) followed *in a common law case* the established rulings of the Massachusetts Courts sustaining an Act to the effect that the Sunday Statute should be a defence to an action against a common carrier.

The opinion (per Mr. Justice MILLER) is harmonious with the remarks of Judge Lowell which we have just quoted, as follows (p. 580):

"It is not easy to see that there was anything in the case as it arose in the Circuit Court which required a construction of the meaning of that Statute, after eliminating what has just been suggested as to the significance of the words 'necessity' or 'charity.' The remainder is a short prohibition against travelling upon the Lord's Day, and provides for the imposition of a penalty for so doing. This is very plain; it admits of no doubt as to its meaning, and its validity has never been considered. When therefore the Supreme Court of Massachusetts in a long line of decisions, has held that the violation of this Statute may be set up as a defence to a liability growing out of the negligence of a railroad company in carrying passengers upon its road, it must have been on some other ground than that to be found in the statute itself. There is no provision in it, and there is no necessary inference to be drawn from its language that it was intended to control the relations between the passenger and the carrier or to modify the obligations of the one to the other."

The Massachusetts decisions were followed simply upon the ground that they established a rule of law of a *purely local* application.

In Olcott v. Supervisors, 16 Wall 678, it was held that whether or not the construction and maintenance

of a railroad owned by a corporation, and constructed and maintained under a statute of a State authorizing such construction and maintenance, is a matter in which the public has any interest of such a nature as to warrant taxation by a municipal division of the State in aid of it is a question of general law and not of statutory construction.

These cases we submit show that the question of statutory construction is not in the case at all so far as judgment creditors are concerned.

B. There is no local rule of property involved

In the *Pekin Mining Co. Case*, (81 Cal. 356) the rule laid down in McShane v. Carter *supra* was extended without argument to foreign corporations. The statute itself does not distinguish between foreign and domestic corporations so far as the first section goes. There is moreover no limitation within the State of the "mining ground" mentioned. If it be shown that this statute may affect property outside the limits of the State of California it would seem clear that there is no local rule of property involved.

In Warburton v. White, 176 U. S. 484, Mr. Justice WHITE says (p. 496) referring to community property laws in Washington Territory.

"The rule is subject to a limitation, which is that where State decisions have interpreted State laws *governing real property or controlling relations which are essentially of a domestic and State nature; in other words, where the State decisions establish a rule of property*, this court when called upon to interpret the State law will, *if it is possible to do so, in the discharge of its duty*, adopt and follow the settled rule of construction affixed by the State court of last re-

sort to the statutes of the State and thus conform to the rule of property within the State."

The Supreme Court of California has never had occasion to consider the position of judgment creditors claiming the benefit of a similar statute enacted by the Legislature of the state wherein the corporation had its domicle but not of the state wherein the land to be foreclosed or conveyed might lie. This question might however arise in a case where the corporation was domestic in California and part or the whole of its mining ground lay without the state and foreclosure should be instituted in the state of California. Under the principles laid down in Muller v. Dows 94 U. S. 444 (and applied in Woodbury v. A. & K. R. R. 72 Fed. 374, 375 where a land grant was also included in the foreclosure) such a foreclosure would be good as to property in the foreign state, and under *McShane v. Carter supra* we think there would be no doubt that the Court would apply the statute to the mortgage.

The New York statute however, so strikingly similar (See Petition for Rehearing Record p. 322 for parallel columns) has been under discussion in the case of First National Bank v. G. V. B. Mining Co. 89 Fed. 439 (affirmed by the Circuit Court of Appeals for the Ninth Circuit 95 Fed. 23), which was a suit brought in the Circuit Court for the District of Idaho to foreclose a mortgage upon land located within that state and made by a New York corporation. Objection was made that the New York statute had not been complied with and the Circuit Court and Circuit Court of Appeals both applied the New York law to the case. Similarly it would

have applied the California statute if the corporation mortgagor had been organized in that state.

It seems to us that there is no better example needed to show that statutes of the nature of that here in question may effect property outside the State and that they will be so enforced. Evidently decisions under such statutes or that judgment creditors may take advantage of them cannot be held to be of only local application.

THE CASES CITED BY THE CIRCUIT COURT OF APPEALS in its opinion (Record pp. 318-319) are either distinctively constructive of a local statute or determinative of a rule of property valid *only* within the local jurisdiction.

They refer to either (1) the omission on the part of the foreign corporation to take some action in which third parties are at the time concerned (even the filing of a particular paper, which is not required by the Act of 1880) in the State where the property is located; (2) the omission to properly execute the mortgage or deed under the laws of the State where the property is situated and (3) where there is a conflict of law as to the effect of the instrument as a mortgage or deed and the consequent devolution of property thereunder.

(See Petition for Rehearing: Record p. 326.)

II.

The Act of 1880 does not apply to foreign corporations because the legislation of any particular state has no effect upon the powers and internal management of cor-

porations organized in other states. The case of Pekin Mining Co. v, Kennedy supra is open to this objection and is therefore in conflict with the later case of Miles v. Woodward 115 Cal. 308.

The Constitution of California (Art. XII, §15) provides:

"No corporation organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State."

The Circuit Court of Appeals held that under this provision the Act of 1880, p. 131, was binding upon foreign corporations (Opinion Record pp. 316 *et seq*), and proceeded upon the theory that the statute did not relate to the conduct of the internal affairs of such corporations.

It has been established by the Supreme Court of the State of California in the case of Miles vs. Woodward 115. Cal. 308 (310) that:

"The constitution was not designed to limit the powers of the legislature when dealing with the organization and government of corporations which are created by its own will and act. Over such corporations it has and may exercise full powers of control. *Over the organization and internal government of foreign corporations it has no such power. The laws of the State do not have extra territorial force.* IT WOULD BE MEANINGLESS FOR THIS STATE TO TRY TO LEGISLATE UPON THE INTERNAL AFFAIRS OF SUCH FOREIGN CORPORATIONS AND IT HAS NOT ATTEMPTED TO DO SO."

While the Courts of California have never construed the Act of 1880 with respect to the limitation of the internal management of corporations whether foreign or domestic, similar statutes have been en-

acted in many states and it has been held by overwhelming authority that such provisions refer to the internal management of corporations as opposed to the transaction of their business with strangers.

Campbell v. Argenta &c. Co. 51, Fed. 1 citing numerous cases. (Dist. of Montana.)

First Nat. Bank v. G. V. B. Mining Co. 89, Fed. 439. (Dist. of Nevada.)

G. V. B. Mining Co. v. First Nat. Bank, 95 Fed. 23. (U. S. C. C. A. 9th Circuit.)

Wood v. Water Works Co. 44 Fed. 147.

Beecher v. Rolling Mill Co. 45 Mich. 103. (Cooley J.)

Zabriskie v. Cleveland &c. R. R. Co. 23 How. 381.

Hervey v. Railway Co. 28 Fed. 169. (Mr. Justice Harlan at Circuit.)

Louisville Trust Co. v. Louisville &c. Ry. Co. 43 U. S. App. 550.

S. C. 174 U. S. 552.

St. Louis &c. R. R. v. Terre Haute &c. R. R. 145 U. S. 393 at 403.

The case of Pekin Mining Co. v. Kennedy (81 Cal. 356) in deciding that judgment creditors of foreign corporations may question the validity of a prior mortgage under the Act of 1880 therefore in effect holds that the Legislature of California may legislate with respect to the internal affairs of foreign corporations. That such a view of the powers of the Legislature has since been repudiated in California appears in the opinion in Miles v. Woodward *supra*.

The contention of the respondents can only succeed upon the theory that the Legislature has power and has in fact *assumed to protect stockholders in a corporation organized and having its corporate existence under and by virtue of the laws of West Virginia.* Under the laws of West Virginia this mortgage was duly authorized and all corporate acts necessary to constitute it a properly executed instrument for creating a lien upon land were complied with. The question arises as to whether the Legislature of California has jurisdiction to prescribe what acts are necessary as between the corporation and its stockholders to authorize the execution of an instrument, which, upon its face, complies with all the formal requisites imposed upon such instrument by the California Laws. We submit that all the powers possessed by the mining company as a corporation and all its relations with its stockholders, grow out of and depend for their existence upon the sovereignty creating the corporation, and which alone may exercise visitatorial powers. The result of this proposition is that while the Legislature of California may regulate the form of instruments creating a lien upon or in any wise connected with the title to real property located within the limits of the state, and while it may even, *as it has not done,* impose license taxes and conditions precedent to the recognition of the foreign corporation in question, it has no power to dictate in what manner corporate action shall be evidenced, or in any other way interfere with the internal management of such corporation. *It may prescribe conditions upon the conduct of business in the state but it can not assume to make laws "for the protection" of stockholders in foreign cor-*

porations. The Legislature has never expressly provided that foreign corporations must take certain corporate action, such as described in Section 1 of the Act of 1880, in order to validate an instrument otherwise executed with due solemnity and we do not think that from any general terms claimed to be employed in isolated parts of the Act of 1880, it can be presumed that the Legislature intended any such action. The law upon the subject has been collated by Mr. Cook in his work on Stock and Stockholders at Section 779 and the elaborate note subjoined.

The attention of the Court is also invited to the following cases in support of the proposition above stated.

Saltmarsh v. Spaulding, 147 Mass. 224.
Vanderpoel v. Gorman, 140 N. Y., 563.
Demarest v. Flack, 128 N. Y., 205.
Coates v. Donnell, 94 N. Y., 163.
Miles v. Woodward, 115 Cal., 308.
American Water Works Co. v. Farmers L. & T. Co., 73 Fed., 956.

In Saltmarsh v. Spaulding, supra, the facts were these:

A foreign corporation was authorized by the laws of New Hampshire where it was organized, to make contracts and to purchase and convey necessary real estate, as well as to adopt by-laws to regulate the powers and duties of its officers. The directors, under a by-law authorizing them to manage and control its business, to hold meetings in Massachusetts, and to appoint necessary agents, ordered the president and treasurer, at a meeting held in Massa-

chusetts, to mortgage the real estate of the corporation, to secure its notes for borrowed money expended thereon: and these officers executed a power of sale mortgage in its name and under its seal. *Held*, that the directors acted within their powers and that the mortgage was valid.

The rationale of this decision appears in the opinion of DEVENS, J. at page 227, as follows:

"While the general principle undoubtedly is, that the law of the place where real property is situate exclusively governs as to the title of parties therein, the disposition and mode of transfer thereof, and the solemnity attending such transfers, and while we do not doubt, that it would be possible to provide by legislation that foreign corporations permitted to own real property situate in this State should only transfer the same by authority of the stockholders, no such provision has been made. (Attorney General v. Bay State Mining Co. 99 Mass. 148.) *While they must comply in their forms of conveyance with those here required, they derive their authority to make them from the rules imposed upon them by the State where they are created.*"

The case of Vanderpoel v. Gorman *supra*, succeeding the other New York cases above cited holds that an assignment for the benefit of creditors made in New York by an insolvent foreign corporation valid under the law of its domicile will be recognized as valid in New York. It is furthermore held that such an assignment is not violative of the provisions of the act "in relation to stock corporations." (Sec. 45 c. 564 Laws of 1890.) which prohibits a transfer or assignment by a corporation in contemplation of insolvency, and that that provision refers solely to domestic corporations; also that the right to make such an assignment exists inherently in all

corporations unless expressly forbidden, and the prohibition furnishes no legitimate evidence of the existence of a public policy in that State, which forbids in the case of a foreign corporation the exercise of this inherent right, and also that in the absence of any statute or by-law of the corporation providing otherwise such an assignment may be executed by the president and secretary under authority of its board of managers.

Said the Court, per PECKHAM, J. (now Mr. Justice PECKHAM of this Court) at page 570:

"The legislature declares, as above stated, that certain transfers or assignments made by the corporation shall be void. What power had the legislature to enact any such provision as to a foreign corporation? *There is nothing in the section limiting its scope and effect to such property as a foreign corporation might have within this State.* It is a broad enactment effecting every assignment made by a corporation under the circumstances mentioned. Can it be supposed that the legislature had in mind a foreign corporation and intended to assume a jurisdiction to declare such an act even when done outside this State, and in respect to property also outside of its boundaries, to be void and of no effect? This cannot be supposed, for we cannot impute to the legislature such ignorance upon the subject of its inability to give extra-territorial effect to its own laws. And if it had foreign corporations in mind when proposing to legislate upon the subject, and knew it could not effect the validity of such transfers outside of this State, and intended to provide that such transfers should not carry the title to property of the corporation held within this State and subject to our jurisdiction, it must be clear that language somewhat appropriate to express such purpose would have been used. The language actually used was neither apt nor pertinent for this purpose. It is both appropriate and pertinent when applied to domestic corporations only.

The language of the section clearly implies full and

complete jurisdiction over the whole subject matter . . . . . The legislature had such jurisdiction in the case of domestic corporations, while in the case of foreign corporations it had not."

The same conditions as to language employed and the meaning to be ordinarly attached thereto exists in the case at bar and make this New York case of particular interest and applicability.

In the case of the G. V. B. Mining Co. v. Bank 95 Fed. 23 the Circuit Court of Appeals affirming the Circuit Court for the District of Idaho has applied the New York law to a case where the corporation was organized there but mortgaged property in Idaho.

In view of the manifest intention of the Legislature by the Act of 1880, to add and make statutory provision with reference to the subject matter of the Act of 1874, the case of Miles v. Woodward, *supra* is extremely interesting and seems to indicate beyond doubt the thorough resolution on the part of the Supreme Court of California of the "meaningless" nature of any legislation which might tend to interfere with the internal management of foreign corporations. That case is, we think, an authority for the position of the complaint here. All these cases are based upon the underlying principle of comity universally recognized and applied in the Courts of the various states. In the ordinary course of such comity, the plaintiff's position cannot be attacked successfully; and to hold in favor of the respondents is in effect to take a position unwarranted by the genius of our institu-

tions and contrary to the established ruling of the Courts already made.

1. THERE WAS DUE CORPORATE ACTION BY THE STOCKHOLDERS.

III

Even if it should be held that the California Statute (Statutes of 1880 p. 131) does apply to foreign corporations, the mortgage is valid and a decree of foreclosure and sale should be directed.

On June 25, 1890, as appears by the minutes of that date, the incorporators constituting all of the stockholders held their first meeting. A telegram was read showing that the Certificate of Incorporation of the Company had been filed in the office of the Secretary of State of West Virginia on June 23rd., and

"On motion of W. W. Tucker, seconded by R. H. Pettigrew, Jr., it was '*Resolved*': That the said Gold Hill Mining Company, issue one hundred first mortgage bonds of the denomination of five hundred dollars each, each bond bearing date of July 1st, 1890; and bearing interest at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July in each year, and so run five years from July 1st. 1890; with the privilege of said company paying off and redeeming the same sooner, by giving to the holders of said bonds six months notice of the company's intention thus to do; to pay off said bonds, and redeem the same on any day interest is payable or on payment of six months interest in advance; and the president and the secretary of said company are hereby authorized and directed to execute said bonds and mortgage for said company, and the said Board hereby authorize and direct the seal of said company to be affixed to the same."

Record pp. 153, 154.

On the 10th day of July, 1890, at a meeting of the Board of Directors at which all members of the Board were present, Mr. Shoecraft was elected president, Mr. Morse, vice president and Mr. Littlefield, secretary and treasurer and it was further "Resolved," that the mine be purchased of Shoecraft, for the stock and bonds secured by first mortgage mentioned in the resolution, (See Minutes Record p. 136.) There is not one resolution or any hint of action on the part of the stockholders or the board in any wise repudiating or questioning the validity of this mortgage which was executed under these resolutions and acknowledged on the 24th day of July, 1890.

In the first place it appears that the action taken at the meeting of June 25th, 1890, by the persons who constituted the incorporators, the stockholders under the Articles of Association and the first board of directors elected at the meeting was properly taken by those present in their capacity as stockholders, although the minutes designate them as incorporators. As a matter of fact their function as incorporators of the company ceased upon the filing of the articles and the acceptance thereof by the State authorities of West Virginia.

Cook on Corporations, (4th Edition) Sec. 10 and cases cited in notes.

Chase v. Lord 77 N. Y. 1, 11.

The meeting of June 25, 1890, was, we think, entirely valid as a stockholders' meeting.

It was held under a similar statute in Illinois that where directors are the only stockholders but one and they all assent their meeting as directors is in effect a stockholders' meeting and their vote a sufficient ratification by two thirds in interest of the stockholders.

Thomas v. Citizens &c. Ry. 104 Ill. 462.

The law of course looks to the substance and no such substantial *or any* compliance with the statute appears in the California case relied upon by the Circuit Court of Appeals affirming the Circuit Court in its opinion that no due corporate action had been taken.

2. THE MORTGAGE ITSELF HAVING BEEN SIGNED BY OFFICERS HOLDING MORE THAN TWO THIRDS OF THE CAPITAL STOCK OF THE MINING COMPANY, THE STATUTE OF 1880 HAS BEEN COMPLIED WITH.

Even if, however, it should be admitted, as is not the case of course, that the California statute does apply to this case that there has not been proper corporate action and that judgment creditors can be heard to raise the question, it is respectfully submitted that there has been a clear and unequivocal compliance with the terms of the statute, by way of written consent so that even if the Mining Company were a domestic corporation, its mortgage would be held good.

The statute provides that the instruments referred to in it may be ratified in one of two ways:

(1) "Either in writing signed and acknowledged by such stockholders" or

(2) "By resolution duly passed at the stockholders' meeting called for that purpose."

The Circuit Court of Appeals proceeded upon the theory that because no resolution was actually passed in literal compliance with the statute, there was no ratification such as required.

It is quite clear that the other alternative by way of writing signed by two thirds of the stockholders would be sufficient to sustain the validity of the mortgage in question.

The question at once arises whether the fact that Shoecraft and Littlefield, the President and Secretary of the Company, signing the mortgage held at that time more than two thirds of the capital stock is a sufficient compliance with the statute as a ratification by consent.

This matter was argued in the petition for rehearing (Record pages 321 to 324) to which the Court's particular attention is called.

Examination of the case of McShane v. Carter (80 Cal. 310) shows that the deeds in question "were authorized by the Boards of Directors of said respective companies, and were executed by the proper officers but were not ratified by the stockholders of said corporations." (p. 311)

By the most ordinary use of language this finding means that there was no ratification in either of the

methods outlined in the statute so that the decision of the Court proceeded upon a violation of both alternatives, by either of which the mortgage might have been validated. The case of Pekin Mining Company v. Kennedy (81 Cal. 356) shows (p. 359) that "there was no evidence offered, however, to show that the deed had been authorized by the trustees of the corporation or that it had been ratified by two thirds of the stockholders, nor was there any other proof of its execution." It was therefore held that the title remained in the company and the Court added (p. 363): "This result comes from the fact that no evidence was offered to prove that the deed was ratified by two thirds of its stockholders as provided in section 1 of the act concerning mining corporations which went into effect April 23, 1880." (Stats. 1880 p. 131).

Indeed as it appears in the Pekin case two very significant facts appear: (1) There was no authorization even by the directors and (2) there was no evidence of ratification in either of the methods provided in the statute.

Examination of the case of Granite Gold Mining Co. v. Magginis (118 Cal. 131 at 136) and Johnson v. California Lustral Co. (59 Pac. 595) in both of which this Court will observe the tendency of the California Court to limit the meaning of the act in question, shows that in the first of these cases the deed was admitted in evidence "without proof of the consent or ratification of stockholders as required by the Act of April 23, 1880" and that in the latter no further proof of authority was adduced and the

salutary rule laid down that the statute in question "must be enforced according to its intent."

It seems therefore that the validity of the execution of the mortgage by persons owning two thirds of the stock as a compliance with the Statute of 1880 has never been passed upon by the California Courts, so that as to this question, the decision of the Circuit Court was entirely untrammelled. As a matter of fact examination of the opinions both of the Circuit Court and the Circuit Court of Appeals, shows that the point was not decided by any direct reference to the facts, although it was particularly emphasized in the petition for rehearing in the Circuit Court of Appeals as well as in the brief presented to that Court.

Since the argument in the Circuit Court and before this case came up in the Circuit Court of Appeals, the latter Court had, however, passed upon an analogous set of facts not nearly so strong as those now presented and had held in favor of the validity of the mortgage. This decision is that of G. V. B. Mining Co. v. First National Bank (95 Fed. 23). In that case the New York statute was construed between the mortgagor and the mortgagee and it was held that where the President and Secretary of the mortgagor company executing a mortgage with another party who had endorsed his written assent as stockholder thereon together owned more than two thirds of the company's stock, the mortgage was in entire satisfaction of the provisions of the New York statute.

Unless therefore there was some distinction be-

tween the New York statute and the California Act of 1880, in the favor of the mortgage in that case, it would follow, it seems to us, as a matter of course that the fact that Shoecraft and Littlefield held more than two thirds of the stock of the Mining Company, made their execution of it, a compliance with that portion of the statute requiring that ratification may be made "in writing signed and acknowledged by such stockholders."

That Shoecraft and Littlefield held that proportion of the stock appears fully in the testimony.

Stock Certificates Nos. 1-21 following.

Record p. 313.

As a matter of fact the New York statute which is set out at length in the petition for rehearing (Record p. 322) differs from the California statute with respect to acknowledgment and filing of the consent, the New York statute requiring its filing but the dispensing with its acknowledgment and the California statute requiring an acknowledgment but no filing.

It is, of course, apparent that under the Californai statute a separate paper signed by the requisite number of stockholders might be executed and filed away among the papers of the company and never actually come to the knowledge of the mortgage or bond holders. Nevertheless such a paper would clearly be sufficient to validate a mortgage; but it is to be particularly noticed that neither of these statutes required that the written consent shall be by separate paper and in the case we have just cited, the Circuit

Court of Appeals for the Ninth Circuit held that under the New York statute no separate paper was needed. We do not see how it is possible to evade the conclusion that the same rule applies to the California statute.

Moreover the showing made in the *G. V. B. Mining Co. case* was more slender than that in the case at bar, because the endorsement of the third stockholder was necessary to make up the two thirds interest. In the present case that amount of stock was held, as we have shown, by the parties signing and acknowledging the mortgage.

We submit therefore that there was such apparent error on the part of the Circuit Court of Appeals and to the great detriment of the petitioner, that this Court should intervene to correct it.

3. ASIDE FROM FORMAL STATUTORY RATIFICATION, THE MINING COMPANY IS ESTOPPED TO DENY THE VALIDITY OF THE MORTGAGE ON ACCOUNT OF ITS ACQUIESCENCE AND ACCEPTANCE OF THE CONSIDERATION FOR THE CREATION OF THE MORTGAGE LIEN, AND THIS ESTOPPEL BINDS JUDGMENT CREDITORS.

The Circuit Court held the mortgage invalid because in its opinion the instrument was not formally ratified in the statutory manner prescribed and thus affirmed.

Record pp. 111, 123, 316-317.

Assuming that the Court was correct in finding no ratification in the precise mode outlined in the

statute it by no means follows that the corporation and those claiming under it may not in equity be held to have ratified or become estopped by *its* conduct from avoiding the apparent legal effect of the instrument.

The Court appears to have overlooked this principle and in effect held that foreign corporations *although as insisted, standing on the same footing under the Act of 1880 as domestic corporations*, were only bound when a technical statutory ratification had been shown and not otherwise.

We submit that there is no authority for this position and that the great weight of decisions including those of the Supreme Court of California shows that the mode of ratification prescribed in the statute does not preclude an estoppel, where as here the defect is not one of power in the corporation but only irregular execution of that power as between the corporation and its directors and officers.

In G. V. B. Min. Co. v. First Nat. Bank 95 Fed. 33, this Court said:

"A contract of a corporation which is *ultra vires* is something outside the object of its creation, as defined in the law of its organization, and therefore beyond the powers conferred upon it by the legislature. Such a contract is not voidable only, but wholly void, and of no legal effect. The objection to the contract is, not merely that the corporation ought not to have made it, but that it could not make it. The contract cannot be ratified by either party, because it could not have been authorized by either. No performance on either side could give the unlawful contract any validity, or be the foundation of any right of action upon it. But, when a corporation is acting within the general scope of the

powers conferred upon it by the legislature, the corporation, as well as persons contracting with it, may be estopped to deny that it has complied with the legal formalities which are prerequisites to its existence, or to its action, because such requisites might in fact have been complied with."

In the case of Gribble v. Columbus Brewing Co. 100 Cal. 67 the action was to foreclose a mortgage. The assignee in insolvency who was also a party appealed from a decree on the pleadings. It was held that where the answer denied the authority of the president of the corporation to execute the mortgage but did not deny the facts constituting an equitable ratification of his acts, plaintiffs were entitled to judgment without proof of the president's original authority.

This is entirely consistent with and cumulative to the decision of the same Court in the case of Underhill v. Santa Barbara, etc., Co., 93 Cal. 300, where it is held that acts of directors in violation of a by-law may be ratified by the stockholders, and generally by the same number of shareholders that would be necessary to enact them; and such ratification need not be formally made in a meeting of the stockholders, but may be presumed from the circumstances of the case, such as long acquiesence in acts beneficial to the corporation with knowledge of all the material facts and may even be presumed without evidence.

Bearing in mind that under the laws of California the powers of corporation can only be exercised through the medium or instrumentality of their boards of directors, the action of the stockholders

alone not being enough (Gashwiler v. Willis 33 Cal. 12. Alta Silver Mining Co. v. Alta Placer Mining Co., 78 Cal. 629) and also that modes of ratification have been pointed out by statute, (Civ. Code §§ 2309, 2310.) the case of Blood v. La Serena Mining Co., 113 Cal. 221 conclusively shows the correctness of the position of the appellant.

There the only authority upon which the president and secretary of a corporation acted in executing a note and mortgage in its name was a resolution passed at the preliminary meeting of the stockholders and before organization of the board of directors. This was held to be insufficient authority and although it was expressly held that there were no acts of "ratification" satisfying the code provisions, still those provisions were so far unconclusive that the mortgagee might recover upon the theory of estoppel and that the estoppel need not be pleaded under the rule laid down in Goetz v. Goldbaum, 37 Pac. Rep. 646.

Said the Supreme Court of California *per* HENSHAW, J. (at pp. 226 *et seq*):

"It is a general principle that a corporation like an individual may ratify and validate any authorized act, the doing of which it would, in the first instance, have authorized and empowered. What conduct and proceedings will constitute and amount to a ratification is a question which the Courts have been called upon to decide with great frequency. In the literature of the law which is thus full upon the subject there has often been little inclination displayed to distinguish between ratification and estoppel *in pais*. The facts are usually set forth at length, and the conclusion is reached and expressed that such conduct amounts to ratification; and in

deed where the form which the ratification must take is not governed by statutory rules, it may and usually does matter little whether the acts of a principal are said to be such as to constitute a ratification or to be such as to constitute an estoppel. By either name he is held equally bound: But the distinction between the two is nevertheless well defined, and where, as in this State, the mode of ratification is governed by statute it becomes important and necessary to distinguish them. Acts and conduct amounting to an estoppel *in pais* may in some instances, amount also to ratification, but, on the other hand, ratification may be complete without any of the elements of estoppel. The elements of an estoppel *in pais* have for so long been settled in this State that it is superfluous even to refer to the leading cases of *Boggs v. Merced Min. Co.* 14 Cal. 279; and *Martin v. Zellerback* 38 Cal. 300.

The requisites and forms of ratification however are entirely within the provisions of the code . . . . . Ratification is thus a question of legal cognizance, while estopped *in pais* addresses itself to equity. Ratification under our code is a legal term with a well defined and specific meaning, and to use it interchangeably with estoppel, or with the verbs 'to adopt' or 'to confirm' must result and has resulted in unfortunate confusion . . . . . (page 228). Now while ratification may be proved under a plea of due execution (*Goetz v. Goldbaum* 37 Pac. Rep. 646), yet the evidence in this case falls short of proving it, and more strongly tends to establish an estoppel."

The case was sent back for a new trial because the trial court had disposed of the case on the question of ratification in plaintiff's favor, and had made no finding on the estoppel.

The same general rule has been recognized without question by Ross J. in the case of Foster v. Bear Valley Irrigation Co. 65 Fed. 836.

These cases show the general policy of the State of California upon the subject of estoppel or equita-

ble ratification; but it is nevertheless contended by the appellees, and that contention appears to have been sanctioned by the Circuit Court of Appeals that the cases of McShane v. Carter 80 Cal. 310, and Pekin Mining Co. v. Kennedy 81 Cal. 356, are applicable and prevent a decree of foreclosure.

This position, if it were true, would be in direct contradiction of the general rule established by the cases which we have just cited. The provision with relation to ratification as contained in the Statute of 1880 is not one whit more mandatory than the code provisions, nor can it in any greater degree affect the application of the doctrine of estoppel.

In both cases the Court seems to have entirely overlooked the distinction between contracts, *ultra vires* the corporation itself and those within its powers but dependent upon certain forms and methods by which those powers may be exercised: i. e., the difference between void contracts incapable of ratification by acquiescence and voidable contracts which may be so ratified.

In the case of Blood v. LaSerena Mining Co. 113 Cal. 221, we have seen that a mortgage *absolutely unauthorized and never ratified according to statutory requirements* may be validated by estoppel, so that where there have been sufficient facts to make out an equitable estoppel we submit that it is absurb to argue that the *McShane* and *Pekin Mining Co.* cases have any application.

Statutes similar to the Act of 1880 exist in many of the states and it has been uniformly held that they

in no wise nullify the application of the doctrine of estoppel whether based upon acts of recognition or the retention of benefits under the instrument. The Courts are alert to apply the distinction between acts void as to the company and those merely unauthorized by it but capable of validation under the general rules governing voidable acts. In some of the older cases the confusion of these classes of acts has led to erroneous and apparently conflicting decisions but the distinction has been so strongly emphasized by the later cases that it should never be lost sight of.

St. Louis &c. R. R. v. Terre Haute &c. R. R. 145 U. S. 403 and cases cited.

Campbell v. Argenta &c. Co. 51 Fed. 1.

G. V. B. Mining Co. v. Bank 95 Fed. 23.

Nevada &c. Syndicate v. Nat. Nickel Co. 96 Fed. 133.

Sioux City &c. Co. v. Trust Co. 82 Fed. 124.

Aurora &c. Soc. v. Paddock 80 Ill. 263.

McCurdy's Appeal 75 Pa. St. 290.

Wood v. Whalen, 93 Ill. 153.

Hanson v. Annapolis, etc. R. R. Co., 50 Md. 490.

Fidelity Co. v. S. V. R. R. Co., (W. Va.) 9, S. E. Rep. 180.

Trader v. Jarvis, 23 W. Va., 100, 108.

Texas etc. Ry. Co. v. Gentry, 69 Texas 625.

Page v. Fall River R. R. Co., 31 Fed. 257.

Merchants' Bank v. State Bank, 10 Wall 608.

See also Mining Co. v. Anglo-Californian Bank, 104 U. S. 192.

Moreover where benefits have been retained even under *ultra vires* acts, the corporation and its creditors are estopped to raise the question.

Jones v. Guarantee, &c. Co. 101 U. S. 622.
R. R. Co. v Ellerman 105 U. S. 166.
Bank v Matthews 98 U. S. 621.

This is based upon the well recognized rule of equity that the doctrine of *ultra vires* when invoked for or against a corporation should not be allowed to prevail where it would defeat the ends of justice or work a legal wrong.

Railway Co. v. McCarthy, 96 U. S. 258.
Jones v. Guarantee &c Co. *supra.*

The right of the petitioner here is we submit inherently just and makes this rule applicable.

The bonds issued upon have naturally passed into the hands of numerous holders for value and as they are negotiable in form, if for no other reason they would on that account be entitled to the protection of this Court. Having been issued, however for valuable consideration with the full consent of the stockholders and board of directors and through repeated ratification these bonds under those principles of justice and equity upon which the Courts have uniformly proceeded are entitled to protection and the foreclosure should be decreed. A merely casual glance at the minutes in evidence will show the great number of meetings at which resolutions were passed, the effect of which clearly shows the intention on the part of the stockholders

and the board to recognize the bonds as valid outstanding obligations and the mortgage as legal security for them.

Record pp. 133, 135, 137, 142, 148, 149, 151.

Upon the question of value received for the bonds and the mortgage securing them the evidence on the complainant's behalf is uncontradicted and showed that one half of the issue was part of the purchase price of the mine.

Record pp. 134-141, 147-151, 172, 195.

WE ARE OF COURSE AWARE of the doctrine promulgated by this Court in the case of the American Construction Company against the Jacksonville Railway Company (148 U. S. 383) to the effect that the Court will exercise its discretion in granting writ of certiorari only sparingly and with great caution; and in any event we should approach this application with great diffidence did we not after a careful examination of numerous authorities, feel convinced that the position taken by the Courts below is erroneous as well as effective of a grievous hardship upon the petitioner. The importance of a determination of the questions submitted relating to the application of the *lex domicilii* and the *lex rei sitae* to questions arising upon the conveyance, mortgaging or other transfer of property located in a different State from that under whose laws the corporation owning or mortgaging it, was organized, is submitted to this Court with the conviction of its general and far reaching effect.

Moreover as we have endeavored to show the great weight of decision favors the position of the petitioner in this case, is conformable to natural justice and right and the only Court taking a different view of the law, is the Supreme Court of a single State, to wit, California.

It is submitted therefore that the writ prayed for should be granted.

C. WALTER ARTZ,
For Petitioner.

No. 208.

Reply Brief of Orig. for Petitioner

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OCTOBER TERM 1900

NO. 503

FREDERICK WILLIAMS,

Petitioner

against

GEORGE C. GAYLORD, CHARLES E. MADDRILL and DWIGHT T. ROLFE

Respondents

BRIEF IN REPLY TO ARGUMENT OF RESPONDENTS.

C. WALTER ARTZ,
For Petitioner

Supreme Court of the United States.

OCTOBER TERM 1900

No. 503.

FREDERICK WILLIAMS,
Petitioner,

AGAINST

GEORGE C. GAYLORD, CHARLES E. MADDRILL AND DWIGHT T. ROLFE,
Respondents.

BRIEF IN REPLY TO ARGUMENT OF RESPONDENTS.

Under leave of Court the petitioner desires to submit the following suggestions of law in reply to the argument of the respondents, filed herein:

I.

The distinction between cases in the State courts (a) construing the actual terms of statutes, (b) which can by no possibility have effect beyond the borders of the State and (c) which like the case at bar lack both of these elements is apparent in the cases cited by the respondents.

In the first and second classes of cases the established decisions of the State courts will be in

general followed by the Federal courts in suits in equity although the provisions of the 34th section of the Judiciary Act are only applicable to actions and proceedings at law.

It is but reasonable that the statutes of the various states should be construed by the local courts and that this construction should be adopted by the Federal tribunals.

It is equally reasonable that local rules of property based upon the common law of the several States as enounced by their respective courts duly constituted and established should be respected to the same extent by the Federal courts sitting in the various local jurisdictions.

When, however, the State decisions are not constructive of a State statute nor enunciatory of a *well settled* local rule of property, they are as clearly possessed of no such authority, but can only be used in the Federal courts by the reasoning contained in them to shed light upon a similar situation, and are of no greater weight than similar decisions of another State court of co-ordinate rank.

In our main brief we have presented the facts in the instant suit, upon which we submit that no other conclusion can be reached than that the California decisions relied upon below have no application as controlling authority.

The respondents' counsel have, however, cited and quoted from numerous cases in this Court, in their argument against the petitioner's position.

Many of the quotations the Court will notice are statements of the general principles which have for many years furnished rules of decision in this Court where the construction of the State statutes or rules of property *clearly local* have been involved, and are therefore not decisive here.

They will be found to be:

(a) Cases where the fact is stated that the construction of a State statute purely local in effect is the basis of the decision among which may be cited.

Christy v. Pridgeon 4 Wall 196.
German Bank v. Franklin Bank 128 U. S. 526.
Cross v. Allen 141 U. S. 528.
Forsythe v. Hammond 166 U. S. 506.
Louisiana v. Pillsbury 105 U. S. 278.
Merchants Bank v. Penna. 167 U. S. 461.

(b) Cases relating to the form and subsequent legal effect of an instrument *as such*, and whether it complies with the recording acts, under the law of the local jurisdiction; as:

Randolph v. Quidnick Co. 135 U. S. 457.
Ober v. Gallagher 93 U. S. 199.
Townsend v. Todd 91 U. S. 452.
Etheridge v. Sperry 139 U. S. 276.

(c) Cases where the local law governing the transmission of estates and the tenure of real estate is involved.

See U. S. v. Fox 94 U. S. 315.

(d) Cases where a remedy of a purely local nature is provided by the common law of the State as declared by its courts.

Bucher v. Cheshire R. R. Co. 125 U. S. 555.

Shelby v. Guy 11 Wheat 361.

Detroit & Osborne, 135 U. S. 492.

This Court is careful always to note in statutory construction cases that the statute is the direct basis of the decision, or that the rule of property is of purely local application.

The fact that a statute may be material to the historical development of the case in hand but its construction was not the actual point decided by the State court, at once removes the case from the catagory just mentioned and the Federal Courts act upon their own reasoning.

In Olcott v. Supervisors 16 Wall 678 a railroad was constructed and maintained under a statute of Wisconsin.

Said STRONG J.: (p. 688)

"Whether the act of Assembly of the State of Wisconsin, approved April 10th, 1867, under which the county orders or promissory notes sued upon, in this case, were issued was a lawful exercise of constitutional power, is the only question in the case. . . . . .

(p. 689) At the outset we are met by the fact that the Supreme Court of the State has decided the act was unauthorized by the Constitution. It was thus ruled in *Whiting v. Fond du Lac* (25 Wis. 188). If that decision is binding upon the Federal courts, it it has established a rule which we are under obligations to follow, the matter is settled.

It is undoubtedly true in general that this court

does follow the decisions of the highest courts of the States respecting *local questions peculiar to themselves*, or respecting the construction of their own constitution and laws. *But it must be kept in mind that it is only decisions upon local questions, those which are peculiar to the several States, or adjudications upon the meaning of the Constitution or statutes of a State, which the Federal Courts adopt as rules for their own judgments.* That *Whiting v. Fond du Lac County* was not a determination of any question of local laws was manifest. It is not claimed to have been that. *But it is relied upon as having given a construction to the Constitution of the State. Very plainly, however, such was not its character or effect.* The question considered by the court was not one of interpretation or construction. *The meaning of no provision of the State Constitution was considered as declared.* What was considered was the uses for which taxation generally, taxation by any government, might be authorized, and particularly whether the construction and maintenance of a railroad, owned by a corporation is a matter of public concern. It was asserted (what nobody doubts), that the taxing of a State extends no farther than to raise money for a public use, as distinguished from private, or to accomplish some end public in its nature, and it was decided that building a railroad if it be constructed and owned by a corporation, though built by authority of the State, is not a matter in which the public has any interest, of such a nature as to warrant taxation in its aid. For this reason it was held that the State had no power to authorize the imposition of taxes to aid in the construction of such a railroad, and therefore that the statute giving Fond du Lac County power to extend such aid was invalid. This was a determination of no local question, or question of statutory or constitutional construction. It was not decided that the Legislature had not general legislative power; or that it might not impose or authorize the imposition of taxes for any public use. Now, whether a use is public or private is not a question of constitutional construction. It is a question of general law. It has as much reference to the Constitution of any other State as it has to the State of Wisconsin. Its solution must be sought not in the decisions of any single State tribunal, but in general principles common to all courts. The

nature of taxation, what uses are public and what are private, and the extent of unrestricted legislative power are matters which, like questions of commercial law, no State court can conclusively determine for us. This consideration alone satisfies our minds that *Whiting v. Fond du Lac County* furnishes no rule which should control our judgment, though the case is undoubtedly entitled to great respect."

The case of Sawyer v. Oakman (1 Lowell 134) cited and quoted at page 17 of our main brief also shows very clearly the difference between the construction of a statute and the application of a general principle of law arising thereon.

This court in the case of B. & O. R. R. v. Baugh, 149 U. S. 368, (at 372 to 375) after reiterating the rule laid down in Burgess v. Seligman, (107 U. S., 33 to 34) to the effect, among other things, that established rules enounced by the State courts in their decision particularly with respect to the law of real estate and the construction of State statutes, will be followed by the Federal courts, but that inasmuch as the very object of giving the National courts jurisdiction was to institute independent tribunals without prejudices or sectional views, it would be a dereliction of duty not to exercise an independent judgment in case not actually foreclosed, refers to several cases, among them, Bucher v. Cheshire R. R. Co., 125 U. S. 555, Detroit v. Osborne, 135 U. S. 492, Claiborne County v. Brooks, 111 U. S. 400, to show that where the local law as determined by decision, is respected as authoritative by this court, it must appear clearly that the matters under consideration are purely local, that the point decided is of essential local application and can by no stretch of legal reason be ex-

tended beyond the borders of the State in such a way as general law is respected abroad.

In Boyce v. Montauk Co. 37 W. Va. 73, the Supreme Court of Appeals applied the New York statute to the case of a foreclosure by a New York corporation of land in West Virginia but applied general law to determine whether the corporation was estopped to raise the question of non-compliance with that statute.

The court will notice finally that there is no decision showing that the ruling in the Pekin case has ever been since applied by the California court to foreign corporations.

II.

The Respondents' Argument fails to distinguish between acts void in toto and incapable of ratification and those which are voidable only.

Counsel appear to lay much stress upon the conclusion drawn by the Supreme court of California in the case of McShane v. Carter (80 Cal. 310) that as the directors had by construction placed upon the statute, in power to convey in the absence of the consent of two thirds of the stock, the title did not pass (Respondents' Argument p. 28); in other words that the instrument was in counsel's words "void."

It seems reasonable that a decision holding an instrument void even if it be admitted to result from the construction placed upon a statute, is of no greater effect than the language of the statute in case it expressly declared such an instrument void.

And if this is so we think that counsel failed to note the applicability of the decision of this court in St. Louis &c. R. R. v. Terre Haute &c. R. R. 145 U. S. 393 (402, 403) cited and quoted in our main brief (p13) where the words "null and void" used in a similar statute in force in Illinois were construed to mean "voidable," *because the statute was in its spirit* ALTHOUGH NOT SO SPECIFIED IN ITS TITLE "*for the protection*" *of stockholders* and not so inherently beyond the powers of the corporation or against the interest of the public as to be void. To construe the Illinois statute otherwise would have been observed under the general rules of corporation law, and a State decision so plainly objectionable on that ground can scarcely be of value in this court.

The inapplicability of cases becomes manifest where the instrument in question is absolutely void as against public morals or affecting public rights, e. g. as against Sunday Laws (Reeves v. Butcher 31 N. J. Law 224; Respondent's Argument pp. 29-30) or beyond the power of a municipal division of the State (German Bank v. Franklin Co., 128 U. S. 526; Respondents' Argument p. 30) or where a corporation having failed to perform certain acts necessary *to be performed within the State* as prerequisite to the conduct of its business therein, seeks to avail of a contract made in the conduct of such business (Cincinnati &c. Co. v. Rosenfeld 55 Ill. 85; Miller v. Ammon 145 U. S. 421) or where the instrument is one which "the corporation had no right to create" i. e. void *per se* (Davis v. Bank 4 McLean 387; Root v Wallace 4 McLean 8; Root v. Goddard 3 McLean 102) or where the corporation seeks to recover under a

continuing or *executory* contract which it "had no power to make" (Penna. R. R. Co. v. St. Louis &c. R. R. Co. 118 U. S. 290; Central Transportation Co. v. Pullman's &c. Co. 139 U. S. 24) or where in the case of National Banks the question presented is "not one of irregularity of organization, or of abuse of a legal power but of an attempt to exercise a power *expressly prohibited by statute*" (McCormick v. Market Bank 165 U. S. 538, 553) or where under established law that National Banks "cannot rightfully exercise any powers except those expressly granted" a purchase by one bank of the stock of another "was entirely outside of the powers conferred upon the bank" and a stockholder was not estopped to raise the question (California Bank v. Kennedy 167 U. S. 362, 366, 370).

Many other instances may be presented where the contracts under consideration are immoral, against public policy or otherwise void *per se* as negotiable paper void *ab initio* and particularly where they are executory in whole or partly or "disable the corporation from performing its obligations to the government and to the public" (SANBORN, J. for the Circuit Court of Appeals for the eighth circuit in Sioux City &c. Co. v. Trust Co. 82 Fed. 124 at 134 distinguishing Thomas v. R. R. Co. 101 U. S. 71; Penna R. R. v. St. Louis &c. R. R. 118 U. S. 290; Oregon &c. Co. v. Oregonian &c. Co. 130 U. S. 1; and Central Trans. Co. v. Pullman's &c. Co. 139 U. S. 24 from one like the instant case).

III.

The Constitutional Provision (Const. Cal. Art.

XII Sec. 15) relating to the transaction of business by foreign Corporations is not material to this case.

We submit that the attempt to help out the Statute of 1880 (p. 131) by the constitutional provision cited must fail.

The Mining Company purchased of Shoecraft, a resident of New York (Certificate of Incorporation: Record p. 199) the mine in question and he caused a deed to be given by the Citizens Bank, a California corporation (Deed; Record p. 218).

Part of the consideration to be paid under the resolution (Record p. 136) was $25,000 out of a total proposed issue of $50,000 of first mortgage bonds. One half of the issue therefore stood as purchase money and the mortgage was as to those bonds a purchase money mortgage with all the equities thereto belonging.

The mortgage was made to a New York trustee and the bonds were made payable in New York City. (Record pp. 14, 23.) The deed was recorded of course by the Mining Company and the mortgage by the trustee. The record having been effected in California the question arises whether the Mining Company transacted business there within the meaning of the constitutional provision.

Counsel for the respondents contend that such was the case.

This point was considered in the case of Cooper Manufacturing Company v. Ferguson, 113 U. S. 727,

where a statute of Colorado provides, "sec. 23. Foreign corporations shall, before they are authorized or permitted to do any business in this State, make and file a certificate, signed by the president and secretary of such corporation, duly acknowledged, with the Secretary of State, and in the office of the recorder of deeds of the county in which such business was carried on, designating the principal place where the business of such corporation shall be carried on in this State, and an authorized agent or agents in this State residing at its principal place of business upon whom process may be served: and such corporations shall be subjected to all the liabilities, restrictions, and duties which are or may be imposed upon corporations of like character organized under the general laws of this State, and shall have no other or greater powers."

This court by defining what was meant by the carrying on of business said (Mr. Justice WOOD) at p. 734.

"Reasonably construed, the Constitution and statute of Colorado forbid, not the doing of a single act of business in the State, but the carrying on of business by a foreign corporation without the filing of the certificate and the appointment of an agent as required by the statute. The Constitution required the foreign corporation to have one or more known places of business in the State before doing any business therein. This implies a purpose at least to do more than one act of business. For a corporation that has done but a single act of business, and purposes to do no more, cannot have one or more known places of business in the State. To have known places of business it must be carrying on or intending to carry on business. The statute passed to carry the provision of the Constitution into effect, makes this plain, for the certificate which it requires

to be filed by a foreign corporation must designate the principal place in the State where the business of he corporation is to be carried on. The meaning of the phrase 'to carry on' when applied to business is well settled. In Worcester's Dictionary the definition is: 'To continue, as to carry on a design: to manage or prosecute, as to carry on husbandry or trade.' The making in Colorado of the one contract sued on in this case, by which one party agreed to build and deliver in Ohio certain machinery and the other party to pay for it, did not constitute a carrying on of business in Colorado.

The obvious construction, therefore, of the Constitution and the statute is, that no foreign corporation shall begin any business in the State, with the purpose of pursuing or carrying it on, until it has filed a certificate designating the principal place where the business of the corporation is to be carried on in the State, and naming an authorized agent, residing at such principal place of business, on whom process may be served. To require such a certificate as a prerequisite to the doing of a single act of business when there was no purpose to do any other business in the State, would be unreasonable and incongruous."

While it appears in that case that the corporation had no purpose of doing any other acts of business in the State of Colorado, it is we submit, equally apparent that under no circumstances could the filing of a paper or other act not in reality the prosecution of business in the ordinary sense of that term, be considered as affected by the statute.

It is to be noticed that the statute in the case mentioned which is in substantially the form usually adopted by the various States, provides that a certain act, namely the filing of the paper in the office of the Recorder or such other place as may be prescribed, shall take place "*before*" such corporations "are authorized or permitted to do *any* business

in this State." Under such a ruling it seems to us obvious that the filing of the deed conveying the property to the company, which was the only act performed within the State of California in the case at bar, cannot in any respect be considered as the doing of business in that State. The mortgage was not to be authorized in the State nor was the action taken to that end in fact performed there, nor was the mortgage executed there. We submit therefore that the constitutional provision of the State of California with respect to foreign corporations quoted above and relied upon by the respondents' counsel, is of no application here, the acts in this case being in no sense the prosecution of business within the State of California.

See also Fritts v. Palmer 132 U. S. 282 distinguishing between the purchase of real estate and the transaction of business; and Gilchrist v. Helena &c. Co. 47 Fed. 593.

Moreover it does not appear that this constitutional provision was at all considered in the case of Pekin Mining Company v. Kennedy, (81 Cal. 356) but the report shows that no reference whatever was made to it and that the decision of the court is in fact merely a decision on the general point that judgment creditors of any corporation which may come before that court whether foreign or domestic, may question acts in excess of the powers of the Directors of the corporation but not themselves, *ultra vires.*

C. WALTER ARTZ,
For Petitioner.

No. 208.

Brf. of Atty for Petitioner.

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Supreme Court of the United States

OCTOBER TERM 1901

No. 208

FREDERICK WILLIAMS,
Petitioner

against

GEORGE C. GAYLORD, CHARLES E. MADDRILL and DWIGHT T. ROLFE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR PETITIONER

C. WALTER ARTZ,
Of Counsel

Supreme Court of the United States

OCTOBER TERM 1901

No. 208

FREDERICK WILLIAMS,
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Brief for Petitioner.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

STATEMENT.

This suit was brought by the petitioner, the trustee of a first mortgage made and executed by the Gold Hill Mining Company, a corporation of the state of West Virginia covering certain mining property located in Nevada County in the State of California, to obtain a decree of foreclosure and sale; and the respondents with the firm of Martin Brothers & Muir were joined as defendants additional to the

Company upon the ground that they had or claimed to have some interest in or lien upon the premises sought to be foreclosed either as judgment creditors or otherwise; which interest or lien, if any, the complainant however, averred was *subsequent* and subordinate in time and degree to the lien of the mortgage sued upon.

Bill, Paragraph VIII; Record, p. 6.

The company and said Martin Brothers & Muir defaulted in pleading and a decree *pro confesso* was entered against them.

Record, p. 18.

The mortgage was dated July 1, 1890, acknowledged July 24, 1890 and recorded July 30, 1890.

Record, pp. 8, 12, 13.

The respondents are judgment creditors whose judgments were entered long after the record of the mortgage in suit, i e, in the years 1896 and 1897.

Record, pp. 23, 27, 29, 37, 44, 45, 131, 144, 151.

The judgment creditors filed pleas and also answered the bill.

Record, pp. 19, 20, 25, 37, 48.

The pleas were overruled because the answers were on file and without any consideration of the merits.

Opinion: Record, pp. 52, 53.

Proofs having been taken (Record, pp. 65-105, 196) and the answers of the respondents having been

amended (Record, pp. 34, 41) the Circuit Court after final hearing brought on upon August 14, 1899, handed down an opinion, on August 28, 1899, (Record, pp. 53, 65) upon which a decree was entered on September 26, 1899, dismissing the bill.

Record, pp. 49, 50.

The bill shows the authorization of the mortgage and bonds to the extent of $50,000; the execution and delivery of the mortgage; the description of the mining and other property conveyed in the mortgage and located in the County of Nevada and State of California; the due formal execution and record of the mortgage; the acceptance of the trust by the trustee; the execution and delivery of the bonds authorized to be issued; the fact that they were issued for value and are now outstanding; the default of the mining company in interest on the 1st day of July, 1893, and the subsequent default in principal under the terms of the mortgage; the existence of subsequent liens held by the respondents; the substitution of the petitioner as trustee in the stead of G. Livingstone Morse, who was originally selected and who accepted that position; and the fact that no other proceedings for the collection of the bonds secured by the mortgage have been had.

Bill, Paragraphs II-X; Record, pp. 2-7.

The Defence of the Judgment Creditors.

The defence arising upon the amended answers of the *judgment creditors* consists in the main of an allegation that the mortgage was not authorized in conformity to the provisions of the first section of

the Act of the Legislature of the State of California passed April 23, 1880, and entitled "An Act for the further protection of *stockholders* in mining companies" requiring the assent of two thirds in amount of the stockholders of any mining company as a prerequisite to the sale, leasing or mortgaging of its land.

Amended Answers: Record, pp. 35, 42, 43, 81-83.

The remaining defences suggested were abandoned as hereafter indicated.

The Issues.

UPON THIS DEFENCE THE FOLLOWING QUESTIONS AROSE:

1. Whether *subsequent judgment creditors* could under the circumstances take the benefit of the statute mentioned and be heard to question the validity of the mortgage upon that ground.

2. Whether the Circuit Court was obliged to follow the decision of the Supreme Court of California holding that the question can be raised by judgment creditors.

3. Whether the statute applied to foreign corporations.

4. Whether, if the statute did apply to the defendant Mining Company, there was a sufficient authorization or ratification of the mortgage thereunder.

6. Whether independent of technical compliance with the terms of authorization or legal ratification laid down in the statute mentioned, the mortgage and bonds which it secures were validated by

acquiescence and retention of consideration on the part of the Mining Company.

UNDER THE DENIALS of the amended answers the complainant was also put to proof of the fact of the execution and delivery of the bonds and mortgage for value received by the Mining Company.

Testimony of Littlefield and Williams.

Record, pp. 65-93.

THE VALIDITY OF THE BONDS was however conceded by counsel on the application for *certiorari* in the following language: "*The validity of the indebtedness is not questioned.*"

Argument of Respondents opposing issue of writ of *certiorari*, p. 40.

AN ISSUE WAS ALSO RAISED as to the proper formal execution of the mortgage *but this was abandoned at the hearing before the Circuit Court of Appeals.*

The Decision of the Circuit Court.

The Circuit Court did not pass upon all of the questions presented but decided:

A. That the Act of 1880 applied to foreign corporations owning mining ground in California, by reason of the Constitutional provision (Constitution of California. Art. XII. §15) to the effect that "no corporation organized outside the limits of this State shall be allowed to transact business in this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State," and because it declared the public policy of the State.

B. That the statute in question did not refer to the internal management of mining companies and is not therefore objectionable when applied to foreign corporations.

C. That the mode of ratification indicated in the statute was essential and exclusive.

D. That the stockholders of the Mining Company did not ratify the mortgage as required by the statute.

E. That subsequent judgment creditors were not estopped to set up absence of ratification under the statute.

F. That the decisions of the Supreme Court of the State of California to the effect that judgment creditors may raise the question are not enunciatory of general or commercial law but are constructive of the statute and bind the Federal tribunals.

The Court considered none of the other points raised but dismissed the bill.

Opinion, Record, pp. 53, 65.

Decree, Record, pp. 49, 50.

The Decision of the Circuit Court of Appeals.

Upon appeal the Circuit Court of Appeals for the Ninth Circuit held

1. That the ruling of the State Supreme Court to the effect that judgment creditors could plead and take the benefit of the statute was a construction thereof and a declaration of the local law; and therefore that it was binding upon the Circuit Court.

2. That the first section of the statute related to corporations foreign as well as domestic, while its third and fourth sections related only to domestic corporations.

3. That by decision of the Supreme Court of California a literal compliance with the first section of the statute was essential to the validity of a mortgage upon mining property; and that no such compliance was shown in the case at bar.

Opinion, Record, pp. 169-713.

A petition for rehearing was filed June 12, 1900, and denied October 15, 1900.

Record, pp. 174-181.

Certiorari Granted by this Court.

Thereupon the complainant filed in this court his petition for a writ of *certiorari* to bring up this cause for review under Section 6 of the Act of Congress of March 3, 1891 (26 U. S. Stats 826); his petition was granted (180 U. S. 637), the writ of *certiorari* was accordingly issued (Record, p. 182) and the record and proceedings in this cause have been returned to this Court under stipulation pursuant to the writ.

Record, p. 183.

IT IS SUBMITTED THAT THE CIRCUIT COURT OF APPEALS ERRED in affirming the decree of the Circuit Court and in uniting with the latter Court in its decision of the points above outlined.

IN SUPPORT OF OUR POSITION in this regard and as grounds for a reversal of the decrees of the courts below attention is called to the following:

ARGUMENT.

I.

The decision of the Supreme Court of California to the effect that judgment creditors may take advantage of the Act of 1880 is not binding upon the Federal Courts either as constructive of that Statute or determinative of a local rule of property.

The statute in question is entitled:

"*An act for the further protection of stockholders in mining companies.*"

Section 1 thereof (until amended subsequent to the accrual of the rights of the parties hereto) read as follows:

"It shall not be lawful for the directors of any mining corporation to sell, lease, mortgage or otherwise dispose of the whole or any part of the mining ground owned or held by such corporation, nor to purchase or obtain, in any way, any additional mining ground, unless such act be ratified by the holders of at least two thirds of the capital stock of such corporation. Such ratification may be made either in writing signed and acknowledged by such stockholders, or by resolution duly passed at a stockholders meeting called for that purpose."

Stats. Cal. 1880 p. 131.

The Nature and Characteristics of the Statute.

Statutes of this character are common to many other of the States and although usually without title and merely forming sectional portions of revised or compiled laws, they have universally been held both by

Federal and State courts to be intended for the protection and security of the *stockholders alone*, who by their own action may be estopped to question the validity or regularity of the proceedings: so that it is necessary that even a stockholder should dissent in order that he may raise the question.

The State may in a proper case by direct proceeding avail of the objection but it can never be raised by creditors whether their claims have been reduced to judgment or not.

Hervey v. Ill., &c. Ry. Co., 28 Fed. 169. (Mr. Justice HARLAN at Circuit in Illinois.)
Thomas v. Citizens Ry. Co., 104 Ill. 462.
Beecher v. Marquette &c., R. M. Co., 45 Mich. 103. (Per COOLEY, J.)
The Vigilancia 68 Fed: 781.
(U. S. D. C. S. D. N.Y. Affirmed U. S. C. C. A. 2nd Circuit: 73 Fed. 452.)
Greenpoint Sugar Co. v. Whiting, 69, N. Y. 328.
Rochester Savings Bk. v. Averell, 96 N. Y. 467.
Star P. Co. v. Andrews, 9 N. Y. Supp. 731.
Campbell v. Argenta Co., 51 Fed. 1. (Circuit Court, Dist. of Montana.)
Boston &c. Co. v. Montana &c. Co., 89 Fed. 529. (Circuit Court: Dist. of Montana.)
Boyce v. Montauk &c. Co., 37 West Va. 73.
Coe v. East &c. Ry. Co., 52 Fed. 531.
(Circuit Court, Northern Dist. of Alabama.)
Alabama &c. Co. v. McKeever, 20 S. Rep. 84. (Supreme Ct. Alabama.)
Antietam Paper Co. v. Chronicle &c. Co., 115 N. C. 143.
Gordon v. Preston, 1 Watts 385.

Cook on Corporations. (4th Ed.) §808.
Short on Railway Bonds and Mortgages, §181.

See also elaborate note to Southern Building &c. Association v. Casa Grande Stable Co. (Supreme Court Alabama) 14 Am. and Eng. Corp Cas. N. S. 199.

The case of Hervey v. Illinois Midland Ry. Co. *supra* was argued upon exceptions to the report of a special commissioner assigned to take the testimony and report his conclusions of law and fact in a consolidated cause composed of several foreclosure suits and a class suit brought by the holder of a majority of the stock of the railway company and its constituents hereinafter mentioned, and on behalf of certain judgment creditors of the Paris & Decatur Railroad Company one of the constituents, to marshal of the assets of the Illinois Midland Railway. [redacted]

In September 1874 the Peoria, Atlanta & Decatur Railroad Company whose name was subsequently changed to that of the Illinois Midland Railway Company purchased of the Paris & Decatur Railroad Company and of the Paris & Terre Haute Railroad Company the franchises and property of the latter, received deeds of conveyance therefor and assumed payment of all the indebtedness of said two companies.

Said Mr. Justice HARLAN (pp. 173-174) outlining and deciding the issue pertinent here.

"Creditors of the before mentioned railroad companies, who are parties herein, claim that in the execution of the mortgages in question certain requirements of the statutes of Illinois were not observed,

and consequently that each of those instruments are void. Those mortgages were executed by the companies at the following dates: By the Peoria, Atlantic & Decatur Railroad Company, April 25, 1872: by the Paris & Decatur Railroad Company, July 1, 1872; by the Paris & Terre Haute Railroad Company, April 1, 1874: and by the Illinois Midland Company, January 1, 1875. It is contended that, by the statutes of Illinois in force prior to and at the time of the execution of those mortgages, the assent of two thirds in amount of the stock of the corporation, expressed in a prescribed mode, was essential to the validity of any railroad mortgage. In support of this position reference is made by counsel to the tenth subdivision of section 19 of the act of March 1, 1872. Rev. St. Ill. (Hurds Ed. 1880) p. 817.

* * * * * *

The objection under consideration can have no application to any one of the sectional mortgages except that executed by the Paris & Terre Haute Railroad company, which was organized after the passage of the Act of 1872. But it cannot avail the parties making it for several reasons one of which is, that as the Paris & Terre Haute Railroad Company admits the execution and delivery of the mortgage, it must, *as between the company and its creditors* be deemed a valid instrument. The provision in the Act of 1872, making the assent of a given number of stockholders essential to the validity of a mortgage is primarily, if not exclusively, for the benefit of stockholders. If it be conceded that stockholders of a railroad corporation formed under the act of 1872, could, as against *bona fide* holders of bonds secured by a mortgage executed by such corporation, defeat a mortgage not executed with the expressed assent of the requisite number of stockholders, it does not follow that the creditors of the corporation could raise any such question. Under the circumstances disclosed by the record, the stockholders of the Paris & Terre Haute Railroad Company are estopped to say that the mortgage is not a valid security, according to its terms for the payment of the bonds intended to be secured by it. Much less can creditors urge such an objection particularly when the State has not, by any direct

proceeding, questioned the validity of the mortgage under the act of 1872."

The case of Campbell v. Argenta etc. Co. 51 Fed. 1. presents the same situation.

There the question of compliance with the Montana statute, as precise at least as the Act of 1880, was sought to be raised by subsequent judgment creditors in defence of a foreclosure suit.

Said the Court upon this subject (pp. 8-9):

"The contract being a voidable one, the question arises as to who can take advantage of any defect in entering into the same. The rule that is established by the statute requiring a meeting of stockholders, etc., and the giving of their consent to the making of a mortgage was for the benefit of the stockholders of the corporation executing the same. This was the view taken of a similar statute by Justice COOLEY and Justice HARLAN in the cases of *Beecher* v. *Rolling-Mill Co. supra* and *Hervey* v. *Railway Co. supra*. The answer must be, then, that only the corporation, or the stockholders of the corporation, can take advantage of the contract under discussion, *Railroad Co.* v. *Ellerman* 105 U. S. 166. This rule would exclude the right of any of the lienholders upon the property embraced in the mortgage from raising the issue that the mortgage was not duly authorized by a vote of the stockholders at a meeting duly called. When a contract made by a corporation is only voidable, the corporation and stockholders can be estopped by their conduct from avoiding the same. *Kent* v. *Mining Co.* 78 N. Y. 185, 186. In the case of *Railway Co.* v. *McCarthy* 96 U. S. 258, the supreme court say:

> "The doctrine of *ultra vires* when invoked for or against a corporation, should not be allowed to prevail where it would defeat the ends of justice or work a legal wrong."

This doctrine is ably asserted in *Whitney, Arms Co.* v. *Barlow* 63 N. Y. 62 It is but proper to remark, however, that the decisions in the courts of

New York, and that of the supreme court, upon the doctrine of *ultra vires*, are not always in harmony. The courts of New York generally follow the rule expressed by COMSTOCK, J. in *Bissell* v. *Railroad Co.* 22 N. Y. 259, while the views expressed by SELDEN, J. in that case are more in accordance with those which have been maintained in the federal courts; yet upon this point the Courts of that state and the Supreme court seem to have united. It is difficult to see upon what principal a contract, which is void as in violation of public policy, as an act of a corporation is decided to be in *Pittsburgh, C. & St. L. Ry. Co.* v. *Keokuk & H. Bridge Co., supra* and which is not authorized by its charter or the law under which it is organized can be maintained, because it might work a wrong or injustice. But this court feels bound by the rule expressed in *Railway Co.* v. *McCarthy*, (96 U. S. 258) and in accordance with it would have to hold that even the corporation and stockholders in this case would be estopped from asserting that the mortgage was void, although it might be held that it was beyond the power of the corporation to execute the same. But holding, as I do, that the mortgage was only a voidable contract, I have no difficulty in maintaining that the corporation and the stockholders in this case would be estopped from denying its validity. The bonds sued on in this case were the consideration for the property embraced in the mortgage; neither the corporation nor the stockholders have ever expressed any desire to disaffirm that contract. The contract was entered into with the knowledge of the stockholders; the corporation held and enjoyed the property so obtained; hence it would be a wrong to allow the corporation to disaffirm this mortgage, and, if neither the stockholders nor the corporation could now object to this mortgage, *much less could the creditors of the Argenta Company object to the validity thereof.*"

It is thus easy to see the reason for the rule so generally applied. It is but one phase of the doctrine, well established in this Court, that no one but the state or a dissenting stockholder my avail of an *ultra vires* act, or an irregularity where the defect

consists in the failure on the part of a corporation or its officers, directors or stockholders to comply with some formality prerequisite to the orderly performance of the function in question.

Jones v. Guaranty &c. Co. 101 U. S. 622.
Railroad Co. v. Ellerman 105 U. S. 166.
St. Louis &c. R. R. Co. v. Terre Haute &c. R. R. Co. 145 U. S. 393, 403.
Zabriskie v. R. R. 23 How. 381, 398.
Central Trans. Co. v. Pullman's &c. Co. 139 U. S. 24, 42, 60.
Davis v. Old Colony R. R. 131 Mass. 258, 260.
See also Sioux City &c. Co. v. Trust Co. 82 Fed. 124, (U. S. C. C. A. 8th Circ.)

In Jones v. Guaranty &c. Co. 101 U. S. 622 creditors sought to attack a mortgage upon after acquired property as *ultra vires*. Said Mr. Justice SWAYNE of the mortgage in question (p. 628):

"If the one here in question be *ultra vires*, no one can take advantage of the defect of power involved but the state. As to all other parties it must be held valid and may be enforced accordingly. *Silver Lake Bank* v. *North* 4 Johns (N. Y.) Ch. 370; *National Bank* v. *Matthews* 98 U. S. 621. In the latter case this subject was fully examined.

A corporation can act only by its agents. If there were any such technical defect as is claimed touching the execution of this mortgage it has been cured by acquiescence and ratification by the mortgagor. *No one else can raise the question. All other parties are concluded. Gordon* v. *Preston* 1 Watts (Pa.) 385.

Where money had been obtained by a corporation upon its securities which were irregular and *ultra vires*, but the money was applied for the benefit of the company, with the knowledge and acquiescence of the shareholders, the company and the shareholders were estopped from denying the

liability of the company to repay it. And the same result follows where such securities are issued with the knowledge of the shareholders so far as the money thus raised is applied for the benefit of the company. *In re Cork & Youghal Railway Co.* Law Rep. 4 Ch. 748.

A court of equity abhors forfeitures and will not lend its aid to enforce them. *Marshall* v. *Vicksburg* 15 Wall 146. Nor will it give its aid in the assertion of a mere legal right contrary to the clear equity and justice of the case. *Lewis* v. *Lyons* 13 Ill. 117."

This case and Railroad Co. v. Ellerman 105 U. S. 166 illustrating the same principle, were both decided several years before the California Supreme Court decided the case of McShane v. Carter 80 Cal. 310, hereinafter referred to and determine the views of this Court upon the subject.

The recent case of St. Louis &c. Railroad v. Terre Haute &c. Railroad 145 U. S. 393 arose out of the filing of a bill in equity designed to set aside and cancel a ninety-nine year lease. This Court speaking through Mr. Justice GRAY, say (at pp. 402-403) in affirmance of a decree sustaining a demurrer to the bill:

"The plaintiff relies on the Statute of Illinois of February 16, 1865 (in force at the date of this contract, but since repealed by the Revised Statutes of 1874) by which it was enacted that "it shall not be lawful for any railroad company of Illinois, or for the directors of any railroad company of Illinois, to consolidate their road with any railroad out of the State of Illinois, or to lease their road to any railroad company out of the State of Illinois, or to lease any railroad out of the State of Illinois, without having obtained the written consent of all of the stockholders of said roads residing in the State of Illinois, and any contract for such consolidation or lease which may be made without having first obtained said *written* consent, signed by the resident stockholders

in Illinois, *shall be null and void*"; and it was provided "that nothing in this act shall be so construed as to authorize the consolidation of any of said railroads with railroads out of the State of Illinois" Illinois Public Laws of 1865 p. 102.

Although this Statute in terms declares that any such lease made without the written consent of the Illinois stockholders, "shall be null and void," it would seem to have been enacted for the protection of such stockholders alone, and intended to be availed of by them only. *It did not limit the scope of the powers conferred upon the corporation by law an excess of which could not have been ratified or made good by estoppel; but only prescribed regulations as to the manner of exercising corporate powers, compliance with which the stockholders might waive, or the corporation might be estopped by lapse of time or otherwise to deny.*" (Citing numerous cases.)

To the same effect and referring to a statute like that under discussion, see the admirable opinion of Judge COOLEY in Beecher v. Marquette, &c., Co., 45 Mich. 103, in which among other things the learned court says (at p. 108):

"Courts often speak of acts and contracts as void when they mean no more than that some party concerned has a right to avoid them. . . . . If it is apparent that an act is prohibited and declared void on grounds of general policy, we must suppose the legislative intent to be that it shall be void to all intents; while if the manifest intent is to give protection to determinate individuals who are *sui juris*, the purpose is sufficiently accomplished if they are given the liberty of avoiding it."

In the case of Ditch Co. v. Zellerbach 37 Cal. 543, SAWYER, J. elaborately discussed the subject of *ultra vires* as applied to corporations. He said:

"The term '*ultra vires*', whether with strict propriety or not, is also used in different senses. An act is said to be *ultra vires* when it is not within the scope of the powers of the corporation to perform it

under any circumstances or for any purpose. An act is also sometimes said to be *ultra vires* with reference to the right of certain parties when the corporation is not authorized to perform it without their consent; or with reference to some specific purpose, when it is not authorized to perform it for that purpose, although fully within the scope of the general powers of the corporation, with the consent of the parties interested, or for some other purpose; and the rights of strangers dealing with corporations may vary according as the act is *ultra vires* in one or the other of these senses. All these distinctions must be constantly borne in mind in considering the question arising out of dealings with a corporation. When an act is *ultra vires*, in the first sense mentioned it is generally if not always void *in toto*, and the corporation may avail itself of the plea; but when it is *ultra vires* in the second sense, the right of the corporation to avail itself of the plea will depend upon the circumstances of the case."

There is no necessity in the case at bar for the Court to determine from the context of the statute that it "would seem to have been enacted for the protection of stockholders alone and intended to be availed of by them only," for the legislature of California has by the title of the Act of 1880 declared it to be "for the further protection of *stockholders* in mining companies"; so that the legislative intent is clear and need not be deduced by reasoning. There is nothing to construe or interpret in that regard. The act is perfectly plain and its beneficiaries expressly defined.

The cases of McShane v. Carter 80 Cal. 310 and Pekin Mining Co. v. Kennedy 81 Cal. 356.

Notwithstanding this overwhelming weight of authority the Supreme Court of California by a divided court three judges only sitting, and *both of those concurring being commissioners appointed by*

law to assist the regular judges, decided the case of McShane v. Carter (80 Cal. 310) to the effect that judgment creditors might set up the Act of 1880 as against the prior grantee of a domestic corporation. This decision was afterward in Pekin Mining Co. v. Kennedy (81 Cal. 356) followed and applied without independent reasoning to the case of a grantee of a foreign corporation, *which in fact* although not so stated in the report *was subject to the provisions of a similar statute in the state of its domicile* (Illinois).

See Illinois Revised Statutes (1874) c. 114 §20.

There is of course no doubt that these decisions are contrary to the established law of corporate relations as laid down by this Court and the State courts generally. The Circuit Court of Appeals was quick to recognize this and careful to refrain from any expression of the individual views of its members, resting its decision of the point entirely upon the proposition that the decisions of the Supreme Court of California were exclusively authoritative and binding upon the Federal courts in that State.

Record, p. 171.

The binding character of the State court decision depends entirely upon the assumption that it either (1) construed the statute or (2) declared a local rule of property effective only within the state.

If this, in our opinion, were the effect of the decisions of the Supreme Court of California, enforcement of the mortgage in this case would never have been sought.

We are well aware that the established decisions of the State courts will be in general followed by the Federal courts in suits in equity although the provisions of the 34th section of the Judiciary Act are only applicable to actions and proceedings at law.

It is but reasonable that the statutes of the various States should be construed by the local courts and that this construction should be adopted by the Federal tribunals.

It is equally reasonable that local rules of property based upon the common law of the several States as enounced by their respective courts duly constituted and established should be respected to the same extent by the Federal courts sitting in the local jurisdictions.

When, however, the State court decisions are not constructive of a State statute nor enunciatory of a *well settled* local rule of property, they are as clearly possessed of no such authority, but can only be used in the Federal courts by the reasoning contained in them to shed light upon similar situations, and are of no greater weight than decisions of other State courts of co-ordinate rank.

We submit that the decision in the *McShane Case* upon which the subsequent case in this respect rests does not operate to construe the statute or to enunciate a local rule of property; and that therefore it is not effective to control the action of the Federal courts in this case.

A. No statutory construction is involved.

Upon the proof before it, the Supreme Court of California took the following position with respect to the meaning and effect of the Statute (80 Cal. 312):

"In our opinion the directors of mining corporations have no power or authority to convey the mining ground without the consent of holders of two thirds of the stock, given as prescribed in the Act."

So far there can be no doubt that the Court construed the act. But the Court then proceeded to draw the following *conclusions.*

(1) "*And it follows* without such consent the title does not pass."
(2) "*And if this be so,* the question can be raised by anyone who connects himself with the title of the corporation which owned the property, as well as by the stockholders thereof."

Why does this second conclusion follow? Certainly not from anything contained in the act itself, for upon this point it is absolutely silent and *there is nothing to construe or interpret.* It must depend upon the relation which to the Court's mind existed between judgment creditors of a corporation, on the one hand and its officers and stockholders on the other. The Court does not in the slightest degree intimate that there are any terms in the statute which under well known rules of construction would indicate that the legislature meant to include judgment creditors among the beneficiaries of the statute. The conclusion that they may raise the question is purely a conclusion not even derived directly from the ruling of the Court in the construction of the statute to the effect that in the absence of the ratification prescribed the directors "had no power to convey;" but is deduced as a sort of subconclusion of the conclusion (totally unwarranted under St. Louis &c. R. R. Co v. Terre Haute &c. R. R. Co 145 U. S. 403) that "without such consent the title does not pass."

With all due respect it is submitted that this conclusion so directly at variance with the great weight of authority and particularly so because of the plain and direct language of the title of the act, can in no sense be held to be a construction of the statute and therefore binding upon the Federal courts. It is in fact and in law *a decision that judgment creditors are not estopped* to avail themselves of acts not even heinous enough to be *ultra vires* the corporation but merely irregular and beyond the power of the officers performing them. That this is a matter of general law seems scarcely more needful of argument than that the conclusion reached is directly contrary to the principles laid down by this Court as well as by the State and Federal courts generally.

It seems to us that the Circuit Court of Appeals failed to distinguish between a decision of the State court construing the terms outlining the effect of the statute *as enacted* and a decision declaring that certain other persons not mentioned or referred to in the statute, may by reason of relations existing between them and the stockholders *under general principles of corporation law*, become beneficiaries of the statute under consideration. We submit that a case of the latter class does not construe a statute or establish a local rule of property, but is merely a decision upon the general law of corporate relations.

In Sawyer v. Oakman (1 Lowell 134 Fed. Case No. 12,404) it was held that the effect which the statute of Massachusetts prohibiting work on the Lord's Day under a penalty should have on the rights of the parties to a collision cause pending in the District Court, one of whom has violated the act in moving his vessel on that day, is not a question of the construction of a statute *but of the application of*

general rules of law to the case of a person who has violated such a statute, and the District Court must follow the decisions of the Supreme Court of the United States, and not those of the State tribunals.

Said LOWELL, J. (21 Fed. Cases 578):

"Now to the extent of holding that work done in contravention of the statute is illegal it may be that the local law should govern, but the statute is silent concerning the legal consequences of doing such an act excepting to the extent of the penalty directly imposed. *The effect which it may have on the wrong-doer's standing as regards third persons is no part of the construction of the statute but* THE APPLICATION OF A GENERAL PRINCIPLE OF LAW."

This case was affirmed by this Court in an opinion not reported (Reporters note, 21 Fed. Cas. 578) and its reasoning rests in great part upon that of Phila. &c. R. R. v. Philadelphia &c. Towboat Co. 23 How. 209.

In Bucher v. Cheshire R. R. Co. 125 U. S. 555 this Court (Mr. Justice FIELD and Mr. Justice HARLAN dissenting) followed *in a common law case* the established rulings of the Massachusetts courts sustaining an act to the effect that the Sunday Statute should be a defence to an action against a common carrier.

The opinion (per Mr. Justice MILLER) is harmonious with the remarks of Judge LOWELL which we have just quoted, as follows (p. 580):

"It is not easy to see that there was anything in the case as it arose in the Circuit Court which required a construction of the meaning of that Statute, after eliminating what has just been suggested as to the significance of the words 'necessity' or 'charity'. The remainder is a short prohibition

against travelling upon the Lord's Day, and provides for the imposition of a penalty for so doing. This is very plain; it admits of no doubt as to its meaning, and its validity has never been considered. When therefore the Supreme Court of Massachusetts in a long line of decisions, has held that the violation of this statute may be set up as a defence to a liability growing out of the negligence of a railroad company in carrying passengers upon its road, it must have been on some other ground than that to be found in the statute itself. There is no provision in it, and there is no necessary inference to be drawn from its language that it was intended to control the relations between the passenger and the carrier or to modify the obligations of the one to the other."

The Massachusetts decisions were followed simply upon the ground that they established a rule of law of a *purely local* application.

This Court is careful always to note in statutory construction cases that the statute is the direct basis of the decision.

The fact that a statute may be material to the historical development of the case in hand but its construction not the actual point decided by the State court, at once removes the case from the category just mentioned and the Federal courts act upon their own reasoning.

In Olcott v. Supervisors, 16 Wall 678, it was held that whether or not the construction and maintenance of a railroad owned by a corporation, and constructed and maintained under a statute of a State authorizing such construction and maintenance, is a matter in which the public has any interest of such a nature as to warrant taxation by a municipal division of the state in aid of it is a question of general law and not of statutory construction.

Said STRONG, J.: (p. 688)

"Whether the act of Assembly of the State of Wisconsin, approved April 10th, 1867, under which the county orders or promissory notes sued upon, in this case, were issued was a lawful exercise of constitutional power, is the only question in the case. . . . . .

(p. 689) At the outset we are met by the fact that the Supreme Court of the State has decided the act was unauthorized by the Constitution. It was thus ruled in *Whiting* v. *Fond du Lac* (25 Wis. 188). If that decision is binding upon the Federal courts, if it has established a rule which we are under obligations to follow, the matter is settled.

It is undoubtedly true in general that this court does follow the decisions of the highest courts of the States respecting *local questions peculiar to themselves*, or respecting the construction of their own constitution and laws. *But it must be kept in mind that it is only decisions upon local questions, those which are peculiar to the several States, or adjudications upon the meaning of the Constitution or statutes of a State, which the Federal Courts adopt as rules for their own judgments.* That *Whiting* v. *Fond du Lac County* was not a determination of any question of local law was manifest. It is not claimed to have been that. But *it is relied upon as having given a construction to the Constitution of the State. Very plainly, however, such was not its character or effect.* The question considered by the court was not one of interpretation or construction. *The meaning of no provision of the State Constitution was considered as declared.* What was considered was the uses for which taxation generally, taxation by any goverment, might be authorized, and particularly whether the construction and maintenance of a railroad, owned by a corporation is a matter of public concern. It was asserted (what nobody doubts) that the taxing of a State extends no farther than to raise money for a public use, as distinguished from private, or to accomplish some end public in its nature, and it was decided that building a railroad if it be constructed and owned by a corporation, though built by authority of the State, is not a matter in which the public has any interest, of such a nature as to warrant

taxation in its aid. For this reason it was held that the State had no power to authorize the imposition of taxes to aid in the construction of such a railroad, and therefore that the statute giving Fond du Lac County power to extend such aid was invalid. This was a determination of no local question, or question of statutory or constitutional construction. It was not decided that the Legislature had not general legislative power; or that it might not impose or authorize the imposition of taxes for any public use. Now, whether a use is public or private is not a question of constitutional construction. It is a question of general law. It has as much reference to the Constitution of any other State as it has to the State of Wisconsin. Its solution must be sought not in the decisions of any single State tribunal, but in general principles common to all courts. The nature of taxation, what uses are public and what are private, and the extent of unrestricted legislative power are matters which, like questions of commercial law, no State court can conclusively determine for us. This consideration alone satisfies our minds that Whiting v. Fond du Lac County furnishes no rule which should control our judgment, though the case is undoubtedly entitled to great respect."

These authorities we submit show that the question of statutory construction is not in the case at all so far as judgment creditors are concerned.

B. There is no local rule of property involved.

In Pekin Mining Co. v. Keanedy, (81 Cal. 356) the rule laid down in McShane v. Carter *supra* was as we have pointed out, extended without argument to a foreign corporation, organized under the laws of a State (Illinois) where a statute similar to that under discussion existed. The statute itself does not distinguish between foreign and domestic corporations so far as the first section goes. There is moreover no limitation within the State of the "mining ground" mentioned. If it be shown that this statute may affect property outside the limits of the State of

California it would seem clear that there is no local rule of property involved.

In other words what is meant by a local rule of property is that the nature of the rule shall be such that it is essentially and exclusively local as contra distinguished from a rule of general application which may in the *case under consideration* be applied to local affairs. *It is the nature of the rule itself and not the fact of its casual local application which determines the controlling effect of the State court decision laying it down.*

In Warburton v. White, 176 U. S. 484, Mr. Justice WHITE says (p. 496) referring to community property laws in Washington Territory and the rule of interpretation thereof:

"The rule is subject to a limitation, which is that where State decisions have interpreted State laws *governing real property or controlling relations which are essentially of a domestic and State nature; in other words, where the State decisions establish a rule of property* this court when called upon to interpret the State law will, *if it is possible to do so, in the discharge of its duty,* adopt and follow the settled rule of construction affixed by the State court of last resort to the statutes of the State and thus conform to the rule of property within the State."

The Supreme Court of California has never had occasion to consider the position of judgment creditors claiming the benefit of a similar statute enacted by the legislature of the State wherein the corporation had its domicile but not of the State wherein the land to be foreclosed or conveyed might lie. This question might however arise in a case where the corporation was domestic in California, part or the whole of its mining ground lay without the State and the foreclosure suit proceeded within the State.

Under the principles laid down in Muller v. Dows 94 U. S. 444 (and applied in Woodbury v. A. & K. R. R. Co. 72 Fed. 374, 375 where a land grant in another State was also included in the foreclosure) the decree in such a suit, the court having acquired jurisdiction of the parties, would be good as to property in the foreign State; and under McShane v. Carter *supra* we think that there is no doubt that the court would apply the statute to the mortgage.

In the case of Muller v. Dows 94 U. S. 444 it was held that a decree foreclosing a mortgage executed by a railroad company of its entire railroad and franchises and ordering a sale, passed by the Circuit Court of the United States for the District of Iowa, which in a suit there pending, had jurisdiction of the mortgagor and the trustees in the mortgage, was not invalid because a part of the property ordered to be sold was situate in the State of Missouri.

Said this Court, speaking through Mr. Justice STRONG (p. 449).

"Without reference to the English chancery decisions, where this objection to the decree (i. e. that it could not effect property outside the State) would be quite untenable, we think the power of courts of chancery in this country is sufficient to authorize such a decree as was here made. It is here undoubtedly a recognized doctrine that a court of equity sitting in a State and having jurisdiction of the person, may decree a conveyance by him of land in another State, and may enforce the decree by process against the defendant. True, it cannot send its process into that other State, nor can it deliver possession of land in another jurisdiction, but it can command and enforce a transfer of the title. And there seems to be no reason why it cannot in a proper case effect the transfer by the agency of the trustees when they are complainants. In *McElrath* v. *The Pittsburg and*

Steubenville R. R. Co., 55 Penn. St. 189—a bill for foreclosure of a mortgage—in which it appeared that a railroad company whose road was partly in Pennsylvania and partly in West Virginia, had mortgaged all their rights in the whole road, the court decreed that the trustee who had brought the suit, being within its jurisdiction, should sell and convey all the mortgaged property, as well that in the State of West Virginia as that in Pennsylvania. This case is directly in point and tends to justify the decree made in the present case. The mortgagors here were within the jurisdiction of the court. So were the trustees of the mortgage. It was at the instance of the latter the master was ordered to make the sale. The court might have ordered the trustees to make it. The mortgagors who were foreclosed were enjoined against claiming property after the master's sale, and directed to make a deed to the purchasers in further assurance. And the court can direct the trustees to make a deed to the purchasers in confirmation of the sale. We cannot, therefore, declare void the decree which was made."

The case of Woodbury v. Allegheny & Kinzua R. R. Co. 72 Fed. 371 was instituted in the Circuit Court for the Western District of Pennsylvania to secure the foreclosure of a joint mortgage covering a line of railroad located in Pennsylvania and New York and also certain lands conveyed by the president of the railway company, Bullis, similarly situated and constituting additional security under the mortgage. A decree of foreclosure was directed, BUFFINGTON, District Judge (with whom also sat and concurred ACHESON, Circuit Judge) saying (p. 375).

"We are of the opinion that the Circuit Court originally had jurisdiction of their (complainants) present bill; that its jurisdiction was not ousted by the filing of a bill in the New York state court; and that under the facts peculiar to this case, the complainants had the right to file this bill, and having filed it, and all parties in interest having appeared and taken part in the case, including the railroad com-

pany, Mr. Bullis, and the trustee, our jurisdiction to foreclose the mortgage upon all the property included *therein, as well that within the State of New* York as that within the State of Pennsylvania, seems to us to be clear. Muller v. Dows 94 U. S. 444. Massie v. Watts 6 Cranch 148; Bradley v. Railroad Co. 36 Pa. St. 141; Burnley v. Stevenson 24 Ohio St. 474; McElrath v. Railroad Co. 55 Pa. St. 208."

See also, Blackmere v. Helena &c. R. R. Co. 2 Flipp. 525, 537, 538.
Wilmer v. Atl. & R. Air. Line Ry. Co. 2 Woods, 447.
Brown v. C. & O. Canal Co. (ALVEY Ch. J. sitting in the Circuit Court for Washington Co.) 73 Md. at p. 607.

Railroad foreclosures naturally present striking instances of the applicability of the jurisdiction of equity in this respect. The same doctrine applies to real estate generally.

As was stated in the case of Brown v. C. & O. Canal Co. *supra.*

"It would seem to be settled both in England and in this country, that where a court of equity acquires authority and jurisdiction to act upon the person, it may indirectly act upon real estate, situate in another state or jurisdiction, by means and through the instrumentality of this authority over the person; and that it may compel such person to give effect to its decree respecting such property, whether it goes to the entire disposition of it, or only to affect it with liens or burthens" (citing STORY'S Conflict of Laws §544).

This principle, long ago illustrated in the case of Penn v. Lord Baltimore 1 Ves. sr. 444 has been sustained by numerous adjudications not involving railroad lines, among which may be cited:

Toller v. Carteret, 2 Vern 494.
Massie v. Watts, *supra.*
Dull v. *Blackman*, 169, U. S. 243.
Carrington v. Brents, 1 McLean 167.
Lyman v. Lyman, 2 Paine 46.
Rourke v. McLaughlin, 38 Cal. 196, 200.
Ward v. Arredondo, 1 Hopk. Ch. 243.
Newton v. Bronson, 13 N. Y. 587. See also note to this case in 67 Am. Dec. pp. 98-101.

In Toller v. Carteret *supra* a bill to foreclose a mortgage upon the island of Sarke, a part of the duchy of Normandy, and under the jurisdiction of the courts of Guernsey, was sustained, the defendant having been served with process within the jurisdiction of the court; for *equitas agit in personam.*

In Lyman v. Lyman *supra* it was held that upon a bill for an account and settlement of a partnership and for general relief, the court might direct a public sale within the State of land without the State, and compel the parties to convey title accordingly.

In Massie v. Watts, 6 Cranch 148, Mr. Chief Justice MARSHALL after reviewing the English cases says: (p. 160)

"Upon the authority of these cases and of others which are to be found in the books, as well as upon general principles this court is of opinion that, in a case of fraud, of trust, or of contract the jurisdiction of a court of chancery is sustainable wherever the person be found, although lands not within the jurisdiction of that court may be effected by the decree."

Said the Supreme Court of California in Rourke v. McDonald, 38 Cal. 196 (at 200):

"The rule seems to be that specific performance will be decreed whenever the parties, or the subject matter, or so much thereof as is sufficient to enable the court to enforce its decree, is within the jurisdiction of the court."

While it is true that in the opinion of this Court in the case of Carpenter v. Strange 141 U. S. 87 (at 106) it was said that "direct action" upon real estate located in Tennessee "was certainly not within the power," of the New York Court in a suit to have a deed declared null and void, the decision upon that branch of the case rested upon the omission of the New York Court to decree *in personam*.

Said Mr. Chief Justice FULLER, (p. 106):

"To declare the deed to Mrs. Strange null and void, in virtue alone of the decree in New York, would be to attribute to that decree the force and effect of a judgment *in rem* by a court having no jurisdiction over the *res. By its terms no provision whatever was made for its enforcement as against Mrs. Strange in respect of the real estate. No conveyance was directed, nor was there any attempt in any way to exert control over her in view of the conclusion that the court announced.*"

The case of Hart v. Sansom, 110 U. S. 151, 155, is corroborative of the same view.

With the last two cases cited before it this Court through Mr. Justice BREWER in the case of Dull v. Blackman, 169 U. S. 243 (at 246) speaking of a suit to quiet title, said:

"Upon these facts we remark that as the land, the subject matter of this controversy, was situate in Iowa litigation in respect to its title properly belonged to the courts within that State. *Ellenwood* v. *Marietta Chair Co.*, 158 U. S. 105, 107, although *if all the parties interested in the land were brought per-*

sonally before a court of another State, its decree would be conclusive upon them and thus IN EFFECT DETERMINE THE TITLE."

THE RESULT OF THESE AUTHORITIES is that the decision of the Supreme Court of California in the case of McShane v. Carter *supra* may in a given instance have the effect of determining the title to lands without the State. This may be accomplished in a suit brought by judgment creditors against the mortgagee, other proper parties being joined, or upon a cross bill in a foreclosure suit. In either case the court having all the parties before it would clearly be possessed of ample power to make a decree awarding affirmative relief by way of reconveyance or release by the mortgagee and to enforce such decree by process *in personam.*

HAVING THE PRINCIPLE UNDERLYING THESE CASES IN MIND, it is interesting and important to the decision of the instant suit to notice that the New York statute so strikingly similar in terms to that of California (See Petition for Rehearing, Record p. 175 for parallel columns) was under discussion in the case of First National Bank v. G. V. B. Mining Co. 89 Fed. 439 (affirmed by the Circuit Court of Appeals for the Ninth Circuit, 95 Fed. 23), which was a suit brought in the Circuit Court for the District of Idaho to foreclose a mortgage upon land located within that State and made by a New York corporation. Objection was made that the New York statute had not been complied with and the Circuit Court and Circuit Court of Appeals both applied that statute to the case. Upon like reasoning it must have applied the California statute if the corporation mortgagor had been organized in that State.

In Boyce v. Montauk, &c. Co. 37 W. Va. 73, the Supreme Court of Appeals applied the New York statute to the case of a foreclosure by a New York corporation of land in West Virginia but applied general law to determine whether the corporation was estopped to raise the question of non-compliance with that statute. The Court rested its decision of the point mainly upon the case of Beecher v. Rolling Mill Co. 45 Mich. 103 and held (p. 85) that "upon examination of the general law and the New York decisions and *the decisions of other States*, we find that this statute was enacted for the benefit of the stockholders and that the question cannot be raised by the corporation itself."

It seems to us that no better examples are needed to show that statutes of the nature here in question may effect property outside the State and that they will be so enforced. Evidently decisions under such statutes or that judgment creditors may take advantage of them cannot be held to be of only local application.

The cases relied on by the Respondents and the Courts below.

Numerous cases were cited by the respondents in the Courts below and also on the application for *certiorari*, and statements of the general principles which have for many years afforded rules of decision in this Court where the construction of State statutes or rules of property *clearly local* have been involved, were extensively quoted. Although some of these cases were mentioned and relied on by the Circuit Court and the Circuit Court of Appeals, we submit that they are not material to the issues in this suit.

They will be found to be:

(a) Cases where the fact is stated that the construction of a State statute purely local in effect is the basis of the decision; among which may be cited:

Christy v. Pridgeon 4 Wall 196.
German Bank v. Franklin Bank 128 U. S. 526.
Cross v. Allen 141 U. S. 528.
Forsythe v. Hammond 166 U. S. 506.
Louisiana v. Pillsbury 105 U. S. 278.
Merchants Bank v. Penna. 167 U. S. 461.

(b) Cases relating to the form and subsequent legal effect of an instrument *as such*, and whether it complied with the recording acts, under the law of the local jurisdiction; as:

Randolph v. Quidnick Co. 135 U. S. 457.
Ober v. Gallagher 93 U. S. 199.
Townsend v. Todd 91 U. S. 452.
Etheridge v. Sperry 139 U. S. 276.

(c) Cases where the local law governing the transmission of estates and the tenure of real estate is involved; and where that law can not possibly have any extra-territorial effect.

See U. S. v. Fox 94 U. S. 315.

(d) Cases where a remedy of a purely local nature was provided by the common law of the State as declared by its courts.

Bucher v. Cheshire R. R. Co. 125 U. S. 555.
Shelby v. Guy 11 Wheat 361.
Detroit & Osborne, 135 U. S. 492.

THE CASES CITED BY THE CIRCUIT COURT OF APPEALS in its opinion (Record pp. 169-173) are in like manner either distinctively constructive of a local statute or determinative of a rule of property valid *only* within the local jurisdiction.

They refer to either (1) the omission on the part of the foreign corporation to take some action in which third parties were at the time concerned (even the filing of a particular paper, which is not required by the Act of 1880) in the State where the property was located; (2) the omission to properly execute the mortgage or deed under the laws of the State where the property was situated, or (3) where there was a conflict of law as to the effect of the instrument as a mortgage or deed and the consequent devolution of property thereunder.

See Petition for Rehearing: Record p. 179.

This Court in the case of B. & O. R. R. v. Baugh, 149 U. S. 368, (at 372 to 375) after reiterating the rule laid down in Burgess v. Seligman, (107 U. S. 33 to 34) to the effect, among other things, that established rules enounced by the State courts in their decision particularly with respect to the law of real estate and the construction of State statutes, will be followed by the Federal courts, but that inasmuch as the very object of giving the National courts jurisdiction was to institute independent tribunals without prejudices or sectional views, it would be a dereliction of duty not to exercise an independent judgment in case not actually foreclosed, refers to several cases, among them, Bucher v. Cheshire R. R. Co., 125 U. S. 555, Detroit v. Osborne, 135 U. S. 492, Claiborne County v. Brooks, 111 U. S. 400, to show that where the local law as determined by decision, is respected as

authoritative by this Court, it must appear clearly that the matters under consideration were purely local, that the point decided was of essential local application and could by no stretch of legal reason be extended beyond the borders of the State in such a way as general law is respected abroad.

The Court will notice finally that there is no decision showing that the ruling in the *Pekin case* has ever been since applied by the California court to foreign corporations.

II.

The Act of 1880 does not apply to foreign corporations because the legislation of one State has no effect upon the powers and internal management of corporations organized in other States. The case of Pekin Mining Co. v. Kennedy supra is open to this objection and is therefore in conflict with the later case of Miles v. Woodward 115 Cal. 308.

The Constitution of California (Art. XII, §15) provides:

"No corporation organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State."

The Circuit Court of Appeals held that under this provision the Act of 1880, p. 131, was binding upon foreign corporations (Opinion Record pp. 169 *et seq*), and proceeded upon the theory that the first section of the statute did not relate to the conduct of the internal affairs of such corporations.

It has been established by the Supreme Court of the State of *California in the case of Miles vs. Woodward*, 115 Cal. 308 (310) that:

"The constitution was not designed to limit the powers of the legislature when dealing with the organization and government of corporations which are created by its own will and act. Over such corporations it has and may exercise full powers of control. *Over the organization and internal government of foreign corporations it has no such power. The laws of the State do not have extra-territorial force.* IT WOULD BE MEANINGLESS FOR THIS STATE TO TRY TO LEGISLATE UPON THE INTERNAL AFFAIRS OF SUCH FOREIGN CORPORATIONS AND IT HAS NOT ATTEMPTED TO DO SO."

While the courts of California have never construed the Act of 1880 with respect to the limitation of the internal management of corporations whether foreign or domestic, similar statutes have been enacted in many States; and it has been held by overwhelming authority that such provisions refer to the internal administration of corporations as opposed to the transaction of their business with strangers.

Campbell v. Argenta &c. Co. 51, Fed 1 citing numerous cases. (Dist. of Montana.)

First Nat. Bank v. G. V. B. Mining Co. 89, Fed. 439. (Dist. of Nevada.)

G. V. B. Mining Co. v. First Nat. Bank, 95 Fed. 23. (U. S. C. C. A. 9th Circuit.)

Wood v. Water Works Co. 44 Fed. 147.

Beecher v. Rolling Mill Co. 45 Mich. 103. (COOLEY J.)

Zabriskie v. Cleveland &c. R. R. Co. 23 How. 381.

Hervey v. Railway Co. 28 Fed. 169. (Mr. Justice HARLAN at Circuit.)

Louisville Trust Co. v. Louisville &c. Ry. Co. 43 U. S. App. 550.
S. C. 174 U. S. 552.
St. Louis &c. R. R. v. Terre Haute &c. R. R. 145 U. S. 393 at 403.

In the case of Pekin Mining Co. v. Kennedy (81 Cal. 356) the Court by deciding that judgment creditors of foreign corporations may question the validity of a prior mortgage under the Act of 1880 in effect holds that the legislature of California may enact laws with respect to the internal affairs of foreign corporations. That such a view of the powers of the legislature has since been repudiated in California appears in the opinion in Miles v. Woodward, *supra*.

In view of the fact that the respondents here seek to enforce an alleged right accruing to the stockholders and to be recognized in effect as the assignees of the latter, the nature of such a right itself as it originally comes into existence is of pertinence.

It clearly grows out of the artificial relations created between a corporation, its directors and its stockholders. It therefore pertains to the internal management of the corporation.

In Madden v. Electric Light Co., 181 Pa. (at 622) the Supreme Court of Pennsylvania in a stockholders' suit quote and adopt the following definition of the Court of Appeals of Maryland:

"What constitutes internal management is well defined by STONE J. in Mining Co. v. Field, 64 Md. 154: 'Where the act complained of affects the complainant solely in his capacity as a member of the

corporation, whether it be as stockholder, director, president or other officer, and is the act of the corporation whether acting in stockholders' meeting or through its agents, the board of directors then such action is the management of the internal affairs of the corporation; and in case of a foreign corporation our courts will not take jurisdiction.'"

It is obvious that the nature of this right is *in nowise* changed by a ruling that judgment creditors may enforce it. Such a decision simply means that judgment creditors may take the beneficial results of *rights accruing to the stockholders, as such,* who are the "complainants" comtemplated by the express language of the title of the statute.

The contention of the respondents can only succeed upon the theory that the legislature has power and has in fact *assumed to protect stockholders in a corporation organized and having its corporate existence under and by virtue of the laws of West Virginia.* Under the laws of West Virginia this mortgage was duly authorized and all corporate acts necessary to constitute it a properly executed instrument for creating a lien upon land were performed. The question arises as to whether the legislature of California has jurisdiction to prescribe what acts are necessary as between the corporation and its stockholders to authorize the execution of an instrument, which, upon its face, complies with all the formal requisites imposed upon such instrument by the California laws. We submit that all the powers possessed by the Mining Company as a corporation and all its relations with its stockholders, grow out of and depend for their existence upon the sovereignty creating the corporation, which alone may exercise visitatorial powers. The result of this proposition is that while the legislature of Cali-

fornia may regulate the form of instruments creating a lien upon or in any wise connected with the title to real property located within the limits of the state, and while it may even, *as it has not done*, impose license taxes and conditions precedent to the recognition of the foreign corporation in question, it has no power to dictate in what manner corporate action shall be evidenced, or in any other way interfere with the internal management of such corporation. *It may prescribe conditions for the conduct of business in the State but it can not assume to make laws "for the protection of stockholders" in foreign corporations.* The legislature has never expressly provided that foreign corportions must take certain corporate action, such as described in Section 1 of the Act of 1880, in order to validate an instrument otherwise executed with due solemnity; and we do not think that from any general terms claimed to be employed in isolated parts of that act it can be presumed that the legislature intended any such action.

The law upon the subject has been collated by Mr. Cook in his work on Stock and Stockholders at Section 779 and the elaborate note subjoined.

The attention of the Court is also invited to the following cases in support of the proposition above stated.

Saltmarsh v. Spaulding, 147 Mass. 224.
Vanderpoel v. Gorman, 140 N. Y., 563.
Demarest v. Flack, 128 N. Y., 205.
Coats v. Donnell, 94 N. Y., 163.
Miles v. Woodward, 115 Cal., 308.
American Water Works Co. v. Farmers L. & T. Co., 73 Fed., 956.

In Saltmarsh v. Spaulding *supra* the facts were these:

A foreign corporation was authorized by the laws of New Hampshire where it was organized, to make contracts and to purchase and convey necessary real estate, as well as to adopt by-laws to regulate the powers and duties of its officers. The directors, under a by-law authorizing them to manage and control its business, to hold meetings in Massachusetts, and to appoint necessary agents, ordered the president and treasurer, at a meeting held in Massachusetts, to mortgage the real estate of the corporation, to secure its notes for borrowed money expended thereon; and these officers executed a power of sale mortgage in its name and under its seal: *Held*, that the directors acted within their powers and that the mortgage was valid.

The rationale of this decision appears in the opinion of DEVENS, J. at page 227, as follows:

"While the general principle undoubtedly is, that the law of the place where real property is situate exclusively governs as to the title of parties therein, the disposition and mode of transfer thereof, and the solemnity attending such transfers, and while we do not doubt, that it would be possible to provide by legislation that foreign corporations permitted to own real property situate in this State should only transfer the same by authority of the stockholders, no such provision has been made. (Attorney General v. Bay State Mining Co., 99 Mass. 148.) *While they must comply in their forms of conveyance with those here required, they derive their authority to make them from the rules imposed upon them by the State where they are created.*"

This case clearly brings out the distinction between a state of affairs like that at bar and one where an express condition is imposed upon foreign corporations prerequisite to the transaction of business in the State.

The case of Vanderpoel v. Gorman *supra*, succeeding the other New York cases above cited holds that an assignment for the benefit of creditors made in New York by an insolvent foreign corporation valid under the law of its domicile will be recognized as valid in New York. It is furthermore held that such an assignment is not violative of the provisions of the act "in relation to stock corporations," (Sec. 45, c. 564, Laws of 1890.) which prohibits a transfer or assignment by a corporation in contemplation of insolvency, and that that provision refers solely to domestic corporations; also that the right to make such an assignment exists inherently in all corporations unless expressly forbidden; and the prohibition furnishes no legitimate evidence of the existence of a public policy in that State, which forbids in the case of a foreign corporation the exercise of this inherent right; and that in the absence of any statute or by-law of the corporation providing otherwise such an assignment may be executed by the president and secretary under authority of its board of managers.

Said the Court, per PECKHAM, J. (now Mr. Justice PECKHAM of this Court) at page 570:

"The legislature declares, as above stated, that certain transfers or assignments made by the corporation shall be void. What power had the legislature to enact any such provision as to a foreign corporation? *There is nothing in the section limiting its scope and effect to such property as a foreign corporation might have within this State.* It is a broad enactment effecting every assignment made by a corporation under the circumstances mentioned. Can it be supposed that the legislature had in mind a foreign corporation and intended to assume a jurisdiction to declare such an act even when done outside this State, and in respect to property also outside of its

boundaries, to be void and of no effect? This cannot be supposed, for we cannot impute to the legislature such ignorance upon the subject of its inability to give extra-territorial effect to its own laws. And if it had foreign corporations in mind when proposing to legislate upon the subject, and knew it could not effect the validity of such transfers outside of this State, and intended to provide that such transfers should not carry the title to property of the corporation held within this State and subject to our jurisdiction, it must be clear that language somewhat appropriate to express such purpose would have been used. The language actually used was neither apt nor pertinent for this purpose. It is both appropriate and pertinent when applied to domestic corporations only.

The language of the section clearly implies full and complete jurisdiction over the whole subject matter . . . . . The legislature had such jurisdiction in the case of domestic corporations, while in the case of foreign corporations it had not."

The same conditions as to language employed and the meaning to be ordinarily attached thereto exists in the case at bar and make this New York case of particular interest and applicability.

In the case of the G. V. B. Mining Co. v. Bank 95 Fed. 23 the Circuit Court of Appeals affirming the Circuit Court for the District of Idaho as we have seen applied the New York law to a case where the corporation was organized there but had mortgaged property in Idaho.

In view of the manifest intention of the Legislature by the Act of 1880, to add "*further* protection" for stockholders and make statutory provision with reference to the subject matter of the Act of March 30, 1874, which related to domestic mining corporations and was then under discussion the case of Miles v. Woodward, *supra*

is extremely interesting and seems to indicate beyond doubt the thorough resolution on the part of the Supreme Court of California of the "meaningless" nature of any legislation which might tend to interfere with the internal management of foreign corporations. That case is, we think, an authority for the position of the complainant here. All these cases are based upon the underlying principle of comity universally recognized and applied in the courts of the various States. In the ordinary course of such comity, the petitioner's position cannot be attacked successfully; and to hold in favor of the respondents is in effect to take a position unwarranted by the genius of our institutions and contrary to the established ruling of the courts already made.

THE CONSTITUTIONAL PROVISION (CONST. CAL. ART. XII SEC. 15) RELATING TO THE TRANSACTION OF BUSINESS BY FOREIGN CORPORATIONS IS NOT MATERIAL TO THIS CASE.

The Mining Company purchased of Shoecraft, a resident of New York (Certificate of Incorporation, Record, p. 106) the mine in question and he caused a deed to be given by the Citizens Bank, a California corporation.

Deed, Record, p. 116.

Part of the consideration to be paid under the resolution (Record, p. 71) was $25,000 out of a total proposed issue of $50,000 of first mortgage bonds. One half of the issue therefore stood as purchase money and the mortgage was to those bonds a purchase money mortgage with all the equities thereto belonging.

The mortgage was made to a New York trustee and the bonds were made payable in New York City. (Mortgage, Record, p. 8; Bond, Record, p. 13) The deed was recorded of course by the Mining Company and the mortgage by the trustee. The record having been effected in California the question arises whether the Mining Company transacted business there within the meaning of the constitutional provision.

Counsel for the respondents contend that such was the case.

This point was considered in the case of Cooper Manufacturing Company v. Ferguson, 113 U. S. 727, concerning a statute of Colorada which provided: "sec. 23. Foreign corporations shall, before they are authorized or permitted to do any business in this State, make and file a certificate, signed by the president and secretary of such corporation, duly acknowledged, with the Secretary of State, and in the office of the recorder of deeds of the county in which such business is to be carried on, designating the principal place where the business of such corporation shall be carried on in this State, and an authorized agent or agents in this State residing at its principal place of business upon whom process may be served; and such corporations shall be subjected to all the liabilities, restrictions, and duties which are or may be imposed upon corporations of like character organized under the general laws of this State and shall have no other or greater powers."

This court defining what was meant by the "carrying on of business" said per Mr. Justice WOODS (at p. 734.):

"Reasonably construed, the Constitution and statute of Colorado forbid, not the doing of a single act of business in the State, but the carrying on of business by a foreign corporation without the filing of the certificate and the appointment of an agent as required by the statute. The Constitution required the foreign corporation to have one or more known places of business in the State before doing any business therein. This implies a purpose at least to do more than one act of business. For a corporation that has done but a single act of business, and purposes to do no more, cannot have one or more known places of business in the State. To have known places of business it must be carrying on or intending to carry on business. The statute passed to carry the provision of the Constitution into effect, makes this plain, for the certificate which it requires to be filed by a foreign corporation must designate the principal place in the State where the business of the corporation is to be carried on. The meaning of the phrase 'to carry on' when applied to business is well settled. In Worcester's Dictionary the definition is: 'To continue, as to carry on a design; to manage or prosecute as to carry on husbandry or trade.' The making in Colorado of the one contract sued on in this case, by which one party agreed to build and deliver in Ohio certain machinery and the other party to pay for it, did not constitute a carrying on of business in Colorado.

The obvious construction, therefore, of the Constitution and the statute is, that no foreign corporation shall begin any business in the State, with the purpose of pursuing or carrying it on, until it has filed a certificate designating the principal place where the business of the corporation is to be carried on in the State, and naming an authorized agent, residing at such principal place of business, on whom process may be served. To require such a certificate as a prerequisite to the doing of a single act of business when there was no purpose to do any other business in the State, would be unreasonable and incongruous."

While it appears in that case that the corporation had no purpose of doing any other acts of business in the State of Colorado, it is we submit, equally

apparent that under no circumstances could the filing of a paper or other act not in reality the prosecution of business in the ordinary sense of that term, be considered as affected by the statute.

It is to be noticed that the statute in the case mentioned, which is in substantially the form usually adopted by the various States, provides that a certain act, namely the filing of the paper in the office of the recorder or such other place as may be prescribed, shall take place "*before*" such corporations "are authorized or permitted to do *any* business in this State." Under such a ruling it seems to us obvious that the filing of the deed conveying the property to the company, which was the only act performed within the State of California in the case at bar, cannot in any respect be considered as the transaction of business in that State. The mortgage was not to be authorized in the State nor was the action taken to that end in fact performed there, nor was the mortgage executed there. We submit therefore that the constitutional provision of the State of California with respect to foreign corporations quoted above and relied upon by the respondents' counsel, is of no application here.

See also Fritts v. Palmer 132 U. S. 282 distinguishing between the purchase of real estate and the transaction of business; and Gilchrist v. Helena &c. Co. 47 Fed. 593.

The case of Pinney v. Nelson 183 U. S. 144 in nowise affects this doctrine. There a suit was brought in California to enforce the liability of a stockholder in a Colorado corporation organized to conduct its business in California. It *actually transacted business in California out of which the indebtedness arose*. This

Court applied the Constitution of California (Art. XII: §15) and the Civil Code of California (§322) imposing a stockholders' liability.

Said Mr. Justice BREWER (at p. 151).

"In this case it appears that the *business transactions* out of which these liabilities arose *were carried on* in California. They resulted from *business done* in California by virtue of an express contract made by the stockholders with reference to such business. It is unnecessary to express an opinion upon the question whether any personal liability would be assumed by the stockholders in reference to business *transacted in Colorado.* Parties may contract with special reference to carrying on business in separate States, and when they make an express contract therefor the busines transacted in each of the States will be affected by the laws of those States, and may result in a difference of liability. Neither is it necessary to express any opinion upon the question whether the defendants could have been held liable under the California statutes, independently of the provisions of the Colorado charter. All that we here hold is that when a corporation is formed in one State, and by the express terms of its charter it is created for doing business in another State, *and* BUSINESS IS DONE *in that State, it must be assumed that the charter contract was made with reference to its laws; and the liabilities which those laws impose will attend the transaction of such business.*"

The Court will at once notice the distinction between such a case and one like that at bar. In the case quoted the liability was directly imposed by the laws of the State where the business out of which it arose was actually carried on. Those laws protected *business transacted within the State.* They did not assume in any wise to protect stockholders of foreign corporations or otherwise interfere with the management of the internal affairs of such corporations.

Moreover it does not appear that this constitutional provision was at all considered in the case of Pekin Mining Company v. Kennedy, (81 Cal. 356) but the report shows that no reference whatever was made to it and that the decision of the Court was in fact merely a decision on the general point that judgment creditors of any corporation which may come before that court whether domestic, or organized in a foreign state having a similar statute in force, may question acts in excess of the powers of the directors of the corporation but not themselves, *ultra vires.*

III.

Even if it should be held that the California Statute (Statutes of 1880 p. 131) does apply to foreign corporations, the mortgage is valid and a decree of foreclosure and sale should be directed.

1. THERE WAS DUE CORPORATE ACTION BY WAY OF RESOLUTION.

On June 25, 1890, as appears by the minutes of that date, the incorporators constituting all of the stockholders held their first meeting. A telegram was read showing that the Certificate of Incorporation of the Company had been filed in the office of the Secretary of State of West Virginia on June 23rd, and

"On motion of W. W. Tucker, seconded by R. H. Pettigrew, Jr., it was '*Resolved*': That the said Gold Hill Mining Company, issue one hundred first mortgage bonds of the denomination of five hundred dollars each, each bond bearing date of July 1st, 1890; and bearing interest at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July in each year, and so run

five years from July 1st, 1890; with the privilege of said company paying off and redeeming the same sooner, by giving to the holders of said bonds six months notice of the company's intention thus to do; to pay off said bonds, and redeem the same on any day interest is payable or on payment of six months interest in advance; and the president and the secretary of said company are hereby authorized and directed to execute said bonds and mortgage for said company, and the said board hereby authorize and direct the seal of said company to be affixed to the same."

Record, pp. 79, 80.

On the 10th day of July, 1890, at a meeting of the board of directors at which all members were present, Mr. Shoecraft was elected president, Mr. Morse, vice president and Mr. Littlefield, secretary and treasurer and it was further "Resolved," that the mine be purchased of Shoecraft, for the stock and bonds secured by first mortgage mentioned in the resolution. (See Minutes Record p. 70, 71.) There is not one resolution or any hint of action on the part of the stockholders or the board in any wise repudiating or questioning the validity of this mortgage which was executed under these resolutions and acknowledged on the 24th day of July, 1890.

In the first place it appears that the action taken at the meeting of June 25th, 1890, by the persons who constituted the incorporators, the stockholders under the Certificate of Incorporation and the first board of directors elected at the meeting was properly taken by those present in their capacity as stockholders, although the minutes inartificially designate them in calling the roll as incorporators. As a matter of fact their function as incorporators

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of the company ceased upon the filing of the articles and the acceptance thereof by the State authorities of West Virginia.

Cook on Corporations, (4th Edition) Sec. 10 and cases cited in notes.
Chase v. Lord 77 N. Y. 1, 11.

The meeting of June 25, 1890, was, we think, entirely valid as a stockholders' meeting.

The action then taken was also good as the action of the promoters and subscribers to all the stock of the corporation (See Certificate of Incorporation, Record p. 106); and it appears from the use of the word "board" near the end of the resolution that these promoters and stockholders who were at that same meeting also elected directors, assumed to act on the resolution to issue the bonds as *de facto* directors of the corporation.

The resolution represented therefore, the action of the promoters in advance of complete organization by the formal election of the board, the stockholders and the *de facto* directors, who were just on the point of becoming directors *de jure*. So far as this resolution represented the action of the promoters acting also as *de facto* directors it was ratified by the resolution to the same substantial effect passed as we have stated at a meeting of the board of directors held on the 10th day of July.

At the outset of a consideration of this branch of the case we desire to call the attention of the Court to the case of Jordon & Co. v. Collins & Co. 107 Ala. 572 to the effect that where the directors of a corporation own all its stock, they may by agreement among themselves authorize its president to sell its assets

and the fact that the authority was not given at a regular directors meeting is immaterial.

STIRLING, J. deciding the case of *In re* Great Northern &c. Co. L. R. 44 Ch. Div. 472 and commenting on the opinion of Lord Bramwell in D'Arcy v. Tamar &c. Ry. Co. (L. R. 2 Ex. 158) said upon this subject (p. 481):

"It is pointed out by Lord *Bramwell*, who took part in the decision, that if a quorum of three, not meeting together and not being regularly summoned, were to act, another quorum of three might meet in a different place and come to exactly an opposite conclusion; and therefore the government of the company by means of quorums so picked up would be impossible. It is also open to this serious observation, that the minority have no means of stating whether they assent to or dissent from the act proposed, and have no means of bringing their views before their colleagues if they do dissent.

These are very serious objections to the validity of the procedure where only a quorum assent to the act; but where the whole body of directors act or assent to the act, even though they do not meet, the validity of the act is not open to the same objections."

See also Bank of Middlebury v. Rutland &c. R. R. Co. 30 Vt. 159, 170.

We think that under this doctrine the resolution of June 25, 1890, so fully evidencing the consent of the stockholders was amply sufficient to authorize the execution of the mortgage. But if action of the board were necessary, we submit that the resolution of July 10, 1890, ratifying the proceedings of June 25, 1890, related back to the action of the promoters and *de facto* directors and is in effect the same as though then perfected; so that the resolution of the meeting of June 25, 1890, was in legal effect an

authorization by the directors of the mortgage and also the consent thereto on the part of all the stockholders.

It was held under a similar statute in Illinois that where directors are the only stockholders but one and they all assent, their meeting as directors is in effect a stockholders' meeting and their vote a sufficient ratification by two thirds in interest of the stockholders.

Thomas v. Citizens &c. Ry. 104 Ill. 462.

Said the Supreme Court of Illinois in that case per Mr. Justice CRAIG (pp. 466, 467):

"Whether the stockholders received such a notice of the meeting as the statute requires, is a matter of no importance. If they met and acted upon the question, their action will be as binding as if they had the proper notice. *The proof shows that they did meet, and assented to the execution of the mortgage. It may be said that the resolution which authorized the loan was the act of the directors, but this is answered by the proof that the directors were the only stockholders of the company but one, and that all the stockholders assented.* THE ACT OF THE DIRECTORS WAS, IN EFFECT, THE ACT OF THE STOCKHOLDERS, *and the resolution which authorized the loan may be regarded as the action or concurrence of the holders of two thirds in amount of the stock of the corporation, which is all that the statute requires.* The meeting, although called a meeting of the directors was in fact a stockholders' meeting. The statute requiring the concurrence of the holders of two thirds in amount of the stock of the corporation before a loan should be made and a mortgage executed, was no doubt passed for the protection of stockholders. It is a matter in which the public have no interest, and it may be true, if the owners of two thirds of the stock had not concurred, they might in a proper proceeding, have avoided the mortgage, but as they did concur in the loan and the mortgage they are concluded by such concurrence."

In Wood v. Whelen, 93 Ill. 153, the promoters had authorized a mortgage which the board of directors of which they were the members afterward recognized. Said Mr. JUSTICE SCOTT for the Supreme Court of Illinois (at p. 164):

"It does appear, however, that the parties adopting the resolution of October 25, 1871, were the promoters of the corporation about to be formed, acting as directors of the *de facto* organization, and after the incorporation was perfected continued to act as directors of the company. Without discussing whether the action of the promoters who may originate a corporation will bind the future corporation, it will appear in the sequel that the action of the promoters of the gas company was fully ratified by the action of the directors of the company on the 27th day of May, 1872, long after the incorporation of the company was completed. *The subsequent action of the legally constituted directory was equivalent to precedent authority to issue the bonds*, and as the rights of no third parties had then intervened there could be no question as to the right of the directors to ratify and confirm the action of the promoters of the corporation. *Stanley* v. *Chester and B. R. W. Co.* 3 My. & Cr. 773."

In the case of Stanton v. New York & Eastern RR. Co. 59 Conn. 272 the law is well stated by ANDREWS, C. J., as follows (p. 285):

"A corporation has power when fully organized to ratify a contract made by its promoters when it is one within the purposes for which the corporation was organized and appears to be a reasonable means for the carrying out of those purposes, Morawetz on Corporations 549; *Touche* v. *Metropolitan Warehousing Co.* L. R. 6 Ch. Appeals, 671. And the ratification makes the contract in all respects what it would have been if the requisite power had existed when it was entered into. *Whitney* v. *Wyman*, 101 U. S. R. 397; Angell & Ames on Corporations §304; *Church* v. *Sterling* 16 Conn. 388; *Fleckner* v. *Bank of U. States*, 8 Wheaton 363, STORY, J."

The law of course looks to the substance and no such substantial *or any* compliance with the statute appears in the California cases relied upon by the Circuit Court of Appeals affirming the Circuit Court in its opinion that no due corporate action had been taken.

The case of Curtin v. Salmon River &c. Co. 130 Cal. 345 does not militate against this rule.

In that case there was no valid action on the part of the directors, the meeting not having been properly called and the mortgagee being himself a director and his vote necessary to a quorum. The Court held as a necessary sequence that there was no valid act of the board which could be ratified, and that therefore the attempted ratification by a two thirds vote of the stockholders under the Act of 1880 was of no avail.

The question of estoppel was not considered, it did not appear that all the stockholders were directors or that the promoters were all of the stockholders and directors or that they had ever acted and there were no intervening equities on the part of bondholders or otherwise. The Court remarked (p. 351) that :

"The stockholders are thus made a component part of the power to make a mortgage effective, but cannot by any act of their own, make a mortgage, or validate one that has not been previously authorized and executed [*sic*] by the board of directors."

Even if these remarks were not *obiter* they could not apply to a case like this where the authorizing resolution of the regularly constituted board relates back by way of ratification to the acts of all of the

promoters or *de facto* directors, and the same individuals occupy each of those positions.

Under the circumstances of this case we submit therefore that the substantial compliance with the statute which is shown should be held sufficient.

2. THE MORTGAGE ITSELF HAVING BEEN SIGNED BY OFFICERS HOLDING MORE THAN TWO THIRDS OF THE CAPITAL STOCK OF THE MINING COMPANY, THE REQUIREMENTS OF THE ACT OF 1880 WERE SATISFIED.

Even if it should be admitted, as is not the case of course, that the California statute does apply to this case, that there was no proper corporate action by way of resolution and that judgment creditors can be heard to raise the question, it is respectfully submitted that there was a clear and unequivocal compliance with the terms of the statute, by way of written consent; so that even if the Mining Company were a domestic corporation, its mortgage would be held good.

The statute provides that the instruments referred to in it may be ratified in one of two ways:

(1) "Either in writing signed and acknowledged by such stockholders" or

(2) "By resolution duly passed at the stockholders' meeting called for that purpose."

The Circuit Court of Appeals proceeded upon the theory that because no resolution was actually passed in literal compliance with the statute, there was no ratification such as required.

It is quite clear that the alternative by way of writing signed by two thirds of the stockholders

would be sufficient to sustain the validity of the mortgage.

The question at once arises whether the fact that Shoecraft and Littlefield, the President and Secretary of the Company, signing the mortgage, held at that time more than two thirds of the capital stock was a sufficient compliance with the statute as a ratification by consent.

This matter was argued in the petition for rehearing (Record pages 174–177) to which the Court's particular attention is called.

Said the Circuit Court of Appeals per HAWLEY, J. (Record p. 171) referring to the case of McShane v. Carter *supra*:

"Under this decision there is no room for any discussion as to whether or not there has been any substantial compliance in the present case with the provisions of the statute. There was no literal compliance. And this is held absolutely essential by the decision in McShane v. Carter. This decision was followed in the subsequent cases of Pekin Mining & Milling Co. v. Kennedy, 81 Cal. 356, 362 (in which the principles were applied to a foreign corporation), Granite Gold M. Co. v. McGinnis 115 Cal. 131, 137, and Johnson v. California Lustral Co. 59 Pac. 595, and has therefore become the settled law of this State."

We respectfully submit that this conclusion is not well founded in the facts as they appear in the cases mentioned.

Examination of the case of McShane v. Carter (80 Cal. 310) shows that the deeds there under discussion "were authorized by the Boards of Directors of said respective companies, and were executed

by the proper officers but were not ratified by the stockholders of said corporations." (p. 311)

By the most ordinary use of language this finding means that there was no ratification in either of the methods outlined in the statute so that the decision of the Court proceeded upon a violation of both alternatives, by either of which the mortgage might have been validated.

The case of Pekin Mining Company v. Kennedy (81 Cal. 356) shows (p. 359) that "there was *no evidence* offered, however, *to show that the deed had been authorized by the trustees of the corporation or that it had been ratified by two thirds of the stockholders, nor was there* ANY OTHER PROOF OF ITS EXECUTION." It was therefore held that the title remained in the company and the Court added (p. 363): "This result comes from the fact that *no evidence* was offered to prove that the deed was ratified by two thirds of its stockholders as provided in section 1 of the act concerning mining corporations which went into effect April 23, 1880. (Stats. 1880 p. 131.)"

Indeed in the *Pekin case* two very significant facts appear: (1) There was no authorization even by the directors and (2) there was no evidence of ratification in either of the methods provided in the statute.

A study of the cases of Granite Gold Mining Co. v. Magginness (118 Cal. 131 at 136) and Johnson v. California Lustral Co. (59 Pac. 595) in both of which this Court will observe the tendency of the California Court to limit the meaning of the statute, shows that in the first of these cases the deed was admitted in evidence "without proof of the

consent or ratification of stockholders as required by the Act of April 23, 1880" and that in the latter no further proof of authority was adduced and the salutary rule laid down that the statute in question "must be enforced according to its intent."

It seems therefore that the validity of the execution of the mortgage by persons owning two thirds of the stock as a compliance with the Statute of 1880 has never been passed upon by the California Courts, so that as to this question, the decision of the Circuit Court was entirely untrammelled. As a matter of fact the opinions both of the Circuit Court and the Circuit Court of Appeals, show that the point was not decided by any direct reference to the facts, although it was particularly emphasized in the petition for rehearing in the Circuit Court of Appeals as well as in the brief presented to that Court.

Since the argument in the Circuit Court and before this case came up in the Circuit Court of Appeals, the latter Court had, however, ruled upon an analogous set of facts not nearly so strong as those now presented and had held in favor of the validity of the mortgage. This decision is that of G. V. B. Mining Co. v. First National Bank (95 Fed. 23). In that case the New York statute was construed between the mortgagor and the mortgagee and it was held that where the president and secretary of the mortgagor company executing a mortgage with another party who had endorsed his written assent as stockholder thereon together owned more than two thirds of the company's stock, the mortgage was in entire satisfaction of the provisions of the New York statute.

Unless therefore there was some distinction between the New York statute and the California Act of 1880, in the favor of the mortgagor in that case, it would follow, it seems to us, as a matter of course that the fact that Shoecraft and Littlefield held more than two thirds of the stock of the Mining Company, made their execution of the mortgage a compliance with that portion of the statute providing that ratification may be made "in writing signed and acknowledged by such stockholders."

That Shoecraft and Littlefield held that proportion of the stock appears fully in the testimony.

Stock Certificates Nos. 1-21.

Record, p. 168.

These certificates show that of the stock transferred from Certificate No. 1 issued to Mr. Shoecraft, 39, 466 shares (Certificates No's 2 and 8) were issued to Mr. Littlefield and 79,000 shares (Certificate No. 20) to Mr. Shoecraft; making in all 118,466 shares out of a total capital of 160,000 shares.

The right of Mr. Littlefield to vote the stock standing in his name as trustee or take equivalent action by way of written consent to the mortgage, cannot be doubted.

Says Cook in his work on Corporations (4th Ed.) §612.

"It is the general rule that a person holding stock as trustee is entitled to vote upon the stock, not only where he is duly registered as a holder of stock in trust, but also where he is registered absolutely as a stockholder upon the books of the Corporation."

See also Conant v. Millaudon 5 La Ann 542.
Wilson v. Central Bridge 9 R. I. 590.
Hoppin v. Buffum 9 R. I. 513.
Re Barker 6 Wend 509.
Re Mohawk &c. R. R. 19 Wend 135.
Market St. Ry. v. Hellman 109 Cal. 571.

Inasmuch as Mr. Littlefield was not a mere "dummy" but interested as beneficiary as well (See Assignment endorsed on Certificates No's 2 & 8) the cases of Stewart v. Mahoney Min. Co. 54 Cal. 149 and Smith v. San Francisco &c. Ry. 47 Pac. Rep. 542 of course do not apply; but regard should be had to the rule above quoted, which has received the sanction and support of the Courts generally including the Supreme Court of California.

Said SEARLS, C. in Market Street Ry. Co. v. Hellman (109 Cal. at p. 589) speaking of a meeting of stockholders resulting in a consolidation:

"Some of the stock was held and voted by trustees who not only appeared upon the books of the corporation as such but were really and in fact trustees for other persons. The contention of appellant is that a trustee of stock has no authority to destroy the corporation by merging it in another corporation. The answer to the proposition must be that *the trustee is the legal owner of the stock and as against the corporation and all the world, except his cestui que trust, no* inquiry may be had touching his actions in the premises. (Civ. Code secs. 307, 312.)"

As a matter of fact the New York statute which is set out at length in the petition for rehearing (Record, p. 174) differs from the California statute with respect to acknowledgment and filing of the consent, the New York statute requiring its filing but the dispensing with its acknowledgment and the

California statute requiring an acknowledgment but no filing.

It is, of course, apparent that under the California statute a separate paper signed by the requisite number of stockholders might be executed and filed away among the papers of the company and never actually come to the knowledge of the mortgagee or bond holders. Although such a paper would clearly be sufficient to validate a mortgage, it is to be particularly noticed that neither of these statutes require that the written consent shall be by separate paper; and in the case we have just cited, the Circuit Court of Appeals for the Ninth Circuit held that under the New York statute no separate paper was needed. We do not see how it is possible to evade the conclusion that the same rule applies to the California statute.

Moreover the showing made in the *G. V. B. Mining Co. case*, was more slender than that in the case at bar, because the endorsement of the third stockholder was necessary to make up the two thirds interest. In the present case that amount of stock was held, as we have shown, by the parties signing and acknowledging the mortgage.

We submit therefore that there was apparent error on the part of the Circuit Court of Appeals in this regard to the great detriment of the petitioner.

3. ASIDE FROM FORMAL STATUTORY RATIFICATION, THE MINING COMPANY IS ESTOPPED TO DENY THE VALIDITY OF THE MORTGAGE ON ACCOUNT OF ITS ACQUIESCENCE AND ACCEPTANCE OF THE CONSIDERATION FOR THE CREATION OF THE MORTGAGE LIEN; AND THIS ESTOPPEL BINDS JUDGMENT CREDITORS.

The Circuit Court held the mortgage invalid because in its opinion the instrument was not formally ratified in the statutory manner prescribed and this was affirmed.

Record pp. 56–57, 63, 170–171.

Assuming that the Court was correct in finding that there was no ratification in the precise mode outlined in the statute it by no means follows that the corporation and those claiming under it may not in equity be held to have ratified or become estopped by *its* conduct from avoiding the apparent legal effect of the instrument.

The Court appears to have overlooked this principle and in effect held that foreign corporations *although as insisted, standing on the same footing under the Act of 1880 as domestic corporations*, were only bound when a technical statutory ratification had been shown and not otherwise.

We submit that there is no authority for this position and that the great weight of decision including that of the Supreme Court of California shows that the mode of ratification prescribed in the statute does not preclude an estoppel, in cases where as here the defect is not one of power in the corporation but only irregular execution of that power as between the corporation and its directors and officers.

In G. V. B. Min. Co. v. First Nat. Bank 95 Fed. at p. 33, the Court said:

"A contract of a corporation which is *ultra vires* is something outside the object of its creation, as defined in the law of its organization, and therefore beyond the powers conferred upon it by the legislature. Such a contract is not voidable only, but

wholly void, and of no legal effect. The objection to the contract is, not merely that the corporation ought not to have made it, but that it could not make it. The contract cannot be ratified by either party, because it could not have been authorized by either. No performance on either side could give the unlawful contract any validity, or be the foundation of any right of action upon it. But, when a corporation, *as well as persons contracting with it*, powers conferred upon it by the legislature, the corporation, as well as persons contracting with it, may be estopped to deny that it has complied with the legal formalities which are prerequisites to its existence, or to its action, because such requisites might in fact have been complied with."

In the case of Gribble v. Columbus Brewing Co. 100 Cal. 67 the action was to foreclose a mortgage. The assignee in insolvency who was also a party appealed from a decree on the pleadings. It was held that where the answer denied the authority of the president of the corporation to execute the mortgage but did not deny the facts constituting an equitable ratification of his acts, plaintiffs were entitled to judgment without proof of the president's original authority.

This is entirely consistent with and cumulative to the decision of the same Court in the case of Underhill v. Santa Barbara, etc., Co., 93 Cal. 300, where it is held that acts of directors in violation of a by-law may be ratified by the stockholders, and generally by the same number of shareholders that would be necessary to enact them; and such ratification need not be formally made in a meeting of the stockholders, but may be presumed from the circumstances of the case, such as long acquiesence in acts beneficial to the corporation with knowledge of all the material facts, and may even be presumed without evidence.

Bearing in mind that under the laws of California the powers of corporations can only be exercised through the medium or instrumentality of their boards of directors, the action of the stockholders alone not being enough (Gashwiler v. Willis 33 Cal. 12. Alta Silver Mining Co. v. Alta Placer Mining Co., 78 Cal. 629) and also that modes of ratification have been pointed out by statute, (Civ. Code §§ 2309, 2310.) the case of Blood v. La Serena Mining Co., 113 Cal. 221 conclusively shows the correctness of the position of the appellant.

There the only authority upon which the president and secretary of a corporation acted in executing a note and mortgage in its name was a resolution passed at the preliminary meeting of the stockholders and before organization of the board of directors. This was held to be insufficient authority and although it was expressly decided that there were no acts of "ratification" satisfying the code provisions, still those provisions were so far unconclusive that the mortgagee could recover upon the theory of estoppel and that the estoppel need not be pleaded under the rule laid down in Goetz v. Goldbaum, 37 Pac. Rep. 646.

Said the Supreme Court of California *per* HENSHAW, J. (at pp. 226 *et seq*):

"It is a general principle that a corporation like an individual, may ratify and validate any authorized act, the doing of which it could, in the first instance, have authorized and empowered. What conduct and proceedings will constitute and amount to a ratification is a question which the courts have been called upon to decide with great frequency. In the literature of the law which is thus full upon the subject there has often been little inclination displayed to distinguish between ratification and estoppel *in pais*. The facts are usually set forth at

length, and the conclusion is reached and expressed that such conduct amounts to ratification; and indeed where the form which the ratification must take is not governed by statutory rules, it may and usually does matter little whether the acts of a principal are said to be such as to constitute a ratification or to be such as to constitute an estoppel. By either name he is held equally bound. But the distinction between the two is nevertheless well defined, and where, as in this State, the mode of ratification is governed by statute it becomes important and necessary to distinguish them. Acts and conduct amounting to an estoppel *in pais* may in some instances, amount also to ratification, but, on the other hand, ratification may be complete without any of the elements of estoppel. The elements of an estoppel *in pais* have for so long been settled in this State that it is superfluous even to refer to the leading cases of *Boggs* v *Merced Min. Co.* 14 Cal. 279; and *Martin* v. *Zellerback* 38 Cal. 300.

The requisites and forms of ratification however are entirely within the provisions of the code . . . . . Ratification is thus a question of legal cognizance, while estoppel *in pais* addresses itself to equity. Ratification under our code is a legal term with a well defined and specific meaning, and to use it interchangeably with estoppel, or with the verbs 'to adopt' or 'to confirm' must result and has resulted in unfortunate confusion . . . . . (page 228). Now while ratification may be proved under a plea of due execution (*Goetz* v. *Goldbaum* 37 Pac. Rep. 646), yet the evidence in this case falls short of proving it, and more strongly tends to establish an estoppel."

The case was sent back for a new trial because the trial court had disposed of it on the question of ratification in plaintiff's favor, and had made no finding on the estoppel.

The same general rule has been recognized without question by Ross J. in the case of Foster v. Bear Valley Irrigation Co. 65 Fed. 836.

These cases show the general policy of the State of California upon the subject of estoppel or equitable ratification; but it is nevertheless contended by the appellees, and that contention appears to have been sanctioned by the Circuit Court of Appeals that the cases of McShane v. Carter 80 Cal. 310, and Pekin Mining Co. v. Kennedy 81 Cal. 356, are applicable and prevent a decree of foreclosure.

This position if it were true, would be in direct contradiction of the general rule established by the cases which we have just cited. The provision with relation to ratification as contained in the Statute of 1880 is not one whit more mandatory than the code provisions, nor can it in any greater degree affect the application of the doctrine of estoppel.

In both cases the Court seems to have entirely overlookod the distinction between contracts, *ultra vires* the corporation itself and those within its powers but dependent upon certain forms and methods by which those powers may be exercised: i. e., the difference between void contracts incapable of ratification by acquiescence and voidable contracts which may be so ratified.

This distinction has been long recognized and was clearly pointed out by Mr. Justice GRAY for this Court in the case of Louisville &c. Ry. Co. v. Louisville Trust Co., 174 U. S. 552 (at 570) in the following language:

"The guaranty by the Louisville, New Albany and Chicago Railway Company of the bonds of the Beattyville Company was not *ultra vires* in the sense of being outside the corporate powers of the former company; for the statute of 1883 expressly authorized such a company to execute such a guaranty, and its board of directors to direct its

execution by the company. The statute, indeed, made it a prerequisite, to the action of the board of directors, that it should be upon the petition of a majority of the stockholders; but this was only a regulation of the mode and the agencies by which the corporation should exercise the power granted to it.

The distinction between the doing by a corporation of an act beyond the scope of the powers granted to it by law, on the one side, and an irregularity in the exercise of the granted powers, on the other, is well established, and has been constantly recognized by this court."

See also Central Transp. Co. v. Pullman's Car Co. 139 U. S. 24 (at 60).

Counsel laid much stress upon the conclusion drawn by the Supreme Court of California in the case of McShane v. Carter (80 Cal. 310) that as the directors, by construction placed upon the statute, had no power to convey in the absence of the consent of two thirds of the stock, the title did not pass (Respondents' Argument, p. 28); in other words that the instrument was in counsel's words "void."

It seems reasonable that a decision holding an instrument "void" (which term is not used in the case mentioned) even if it be admitted to result from the construction placed upon a statute, is of no greater effect than the language of the statute in case it should expressly declare such an instrument to be void. And if this is so we think that counsel failed to note the applicability of the decision of this Court in St. Louis &c. R. R. v. Terre Haute &c. R. R. 145 U. S. 393 (402, 403) cited and quoted above where the words "null and void" used in a similar statute in force in Illinois were construed to mean "voidable" *because the statute was in its spirit* ALTHOUGH NOT SO SPECIFIED IN ITS TITLE "*for the protection of stockholders*" and not so inherently

beyond the powers of the corporation or against the interest of the public as to be void. To construe the Illinois statute otherwise would have been absurd under the general rules of corporation law, and a State decision so plainly objectionable on that ground can scarcely be of value in this court. (See Remarks of COOLEY J. in Beecher v. Rolling Mill Co. 45 Mich. at 108.)

The case at bar is distinguishable at a glance from those in which the instrument in question is absolutely void as against public morals or affecting public rights, e. g. as against Sunday laws (Reeves v. Butcher 31 N. J. Law 224); or beyond the power of a municipal division of the State (German Bank v. Franklin Co., 128 U. S. 526); or where a corporation having failed to perform certain acts necessary *to be performed within the State* as prerequisite to the conduct of its business therein, seeks to avail of a contract made in the conduct of such business (Cincinnati &c. Co. v. Rosenfield 55 Ill. 85; Miller v. Ammon 145 U. S. 421) or where the instrument is one which "the corporation had no right to create" i. e. void *per se* (Davis v. Bank 4 McLean 387; Root v. Wallace 4 McLean 8; Root v. Goddard 3 McLean 102) or where the corporation seeks to recover under a *continuing* or *executory* contract which it "had no power to make" (Penna. R. R. Co. v. St. Louis &c. R. R. Co. 118 U. S. 290; Central Transportation Co. v. Pullman's &c. Co. 139 U. S. 24) or where in the case of National Banks the question presented is "not one of irregularity of organization, or of abuse of a legal power but of an attempt to exercise a power *expressly prohibited by statute*" (McCormick v. Market Bank 165 U. S. 538, 553) or where under established law that National Banks "cannot rightfully exercise any powers except

those expressly granted" a purchase by one bank of the stock of another "was entirely outside of the powers conferred upon the bank" and a stockholder was not estopped to raise the question (California Bank v. Kennedy 167 U. S. 362, 366, 370).

Many other instances may be presented where the contracts under consideration were immoral, against public policy or otherwise void *per se* as negotiable paper void *ab initio*, and particularly where they were executory in whole or part or "disable the corporation from performing its obligations to the government and to the public" (SANBORN, J. for the Circuit Court of Appeals for the Eighth Circuit in Sioux City &c. Co. v. Trust Co. 82 Fed. 124 at 134 distinguishing Thomas v. R. R. Co. 101 U. S. 71; Penna. R. R. v. St. Louis &c. R. R. 118 U. S. 290; Oregon &c. Co. v. Oregonian &c. Co. 130 U. S. 1; and Central Trans. Co. v. Pullman's &c. Co. 139 U. S. 24 from one like the instant case).

In the case of Blood v. La Serena Mining Co. 113 Cal. 221, we have seen that a mortgage *absolutely unauthorized and never ratified according to statutory requirements* may be validated by estoppel, so that where there have been sufficient facts to make out an equitable estoppel we submit that it is absurd to argue that the *McShane* and *Pekin Mining Co.* cases have any application.

Statutes similar to the Act of 1880 as we have seen, exist in many of the States and it has been uniformly held that they in nowise nullify the application of the doctrine of estoppel whether based upon acts of recognition or the retention of benefits under the instrument. The courts are alert to apply the distinction between acts void as to the

company and those merely unauthorized by it but capable of validation under the general rules governing voidable acts. In some of the older cases the confusion of these classes of acts has led to erroneous and apparently conflicting decisions but the distinction has been so strongly emphasized by the later cases that it should never be lost sight of.

St. Louis &c. R. R. v. Terre Haute &c. R. R. 145 U. S. 403 and cases cited.
Campbell v. Argenta &c. Co. 51 Fed. 1.
G. V. B. Mining Co. v. Bank 95 Fed. 23.
Nevada &c. Syndicate v. Nat. Nickel Co. 96 Fed. 133.
Sioux City &c. Co. v. Trust Co. 82 Fed. 124.
Aurora &c. Soc. v. Paddock 80 Ill. 263.
McCurdy's Appeal 75 Pa. St. 290.
Wood v. Whalen, 93 Ill. 153.
Hanson v. Annapolis, etc. R. R. Co., 50 Md. 490.
Fidelity Co. v. S. V. R. R. Co., (W. Va.) 9, S. E. Rep. 180.
Trader v. Jarvis, 23 W. Va., 100, 108.
Texas etc., Ry. Co. v. Gentry, 69 Texas 625.
Page v. Fall River R. R. Co., 31 Fed. 257.
Merchants' Bank v. State Bank, 10 Wall 608.
See also Mining Co. v. Anglo-Californian Bank, 104 U. S. 192.

Moreover where benefits have been retained even under *ultra vires* acts, the corporation and its creditors are estopped to raise the question.

Jones v. Guarantee, &c. Co. 101 U. S. 622.

R. R. Co. v. Ellerman 105 U. S. 166.
Bank v. Matthews 98 U. S. 621.

This is based upon the well recognized rule of equity that the doctrine of *ultra vires* when invoked for or against a corporation should not be allowed to prevail where it would defeat the ends of justice or work a legal wrong.

Railway Co. v. McCarthy, 96 U. S. 258.
Jones v. Guarantee &c. Co. *supra.*

The right of the petitioner here is inherently just and makes this rule applicable.

The bonds issued upon have naturally passed into the hands of numerous holders for value and as they are negotiable in form, if for no other reason they would on that account be entitled to the protection of this Court. Having been issued, however for valuable consideration with the full consent of the stockholders and board of directors and through repeated ratification these bonds under those principles of justice and equity upon which the courts have uniformly proceeded are entitled to protection and the foreclosure should be decreed. A merely casual glance at the minutes in evidence will show the great number of meetings at which resolutions were passed, the effect of which clearly shows the intention on the part of the stockholders and the board to recognize the bonds as valid outstanding obligations and the mortgage as legal security for them.

Record pp. 69, 70, 71, 73, 79.

The existence of the bonds as valid outstanding obligations has been conceded, as we have indicated above.

WE SUBMIT THEREFORE, that the decrees of the Circuit Court of Appeals and the Circuit Court are erroneous and that they should be reversed and a decree of foreclosure directed as prayed.

C. WALTER ARTZ,
For Petitioner.

No. 208.
By. of Artz for Pet.

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APR 7 19
JAMES H. McKENNE

SUPREME COURT OF THE UNITED STATES

Filed April 7, 1902.

OCTOBER TERM, 1901.

No. 208

FREDERICK WILLIAMS,
Petitioner

against

GEORGE C. GAYLORD, CHARLES E. MADDRILL AND DWIGHT T. ROLFE

BRIEF FOR PETITIONER IN REPLY

C. WALTER ARTZ,
Of Counsel

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1901

FREDERICK WILLIAMS,
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GEORGE C. GAYLORD,
CHARLES E. MADDRILL
AND DWIGHT T. ROLFE

No. 208

BRIEF FOR PETITIONER IN REPLY

The brief for the respondents filed in this cause appears to make appropriate the following suggestions:

I.

AS TO MATTERS OF FACT.

THE COURT SHOULD NOT BE MISLED BY THE SOMEWHAT INCOMPLETE STATEMENT MADE ON PAGE 1 OF RESPONDENTS' BRIEF, TO THE EFFECT THAT THE GOLD HILL MINING COMPANY WAS ORGANIZED FOR THE PURPOSE, AMONG OTHERS, OF "PURCHASING, OPERATING, MANAGING AND WORKING MINES IN THE STATE OF CALIFORNIA."

Upon this statement the implication might arise that so far as the purpose of the incorporation of the Mining Company was the purchasing etc, of mines, it

was to be limited to the State of California. Such an implication is, however, defeated by the following words in the charter, succeeding the foregoing quotation without intervening punctuation: "and elsewhere, to work the same," etc.

Record, p. 105.

It is quite clear from the language employed in the charter that the Mining Company had full power to purchase and operate mines elsewhere, although it was to have a branch office at Nevada City, California, near the mines which it was first to acquire.

Record, p. 106.

The effort which appears to be made to induce the assumption that the Mining Company was organized for the purpose of carrying on mining operations exclusively in California must, we think, therefore, fail of foundation on the facts.

II.

AS TO MATTERS OF LAW.

1. THE EARNEST EFFORT TO DISTINGUISH THE REASONING OF THIS COURT IN THE CASE OF ST. LOUIS, &c., R. R. Co. v. TERRE HAUTE, &c., R. R. Co., 145 U. S 393, (AT 403) MUST ALSO FAIL.

Counsel are in error in his assertion that the Court rested its decision that the Illinois statute there referred to could be availed of by stockholders alone upon a prior and exclusively controlling decision of the Supreme Court of Illinois. The Court upon the other hand cited in support of its decision the cases of Zabriskie v. Cleveland, &c., Railroad, 23 How. 381, 398; Central Transportation Co. v. Pullman's Car Co.,

139 U. S. 24, 42, 60; Davis v. Old Colony Railroad, 131 Mass. 258, 260; Beecher v. Marquette and Pacific Co., 45 Mich. 103; and last of all, Thomas v. Citizens' Railway, 104 Illinois, 462, *which did not refer to the same statute*, but to a statute of the character of that under consideration in the case at bar requiring a two-thirds consent of stockholders as necessary to the validity of a mortgage by a railroad corporation. Clearly this Illinois case was not cited as exclusive authority, but merely as one of a number of decisions on the general law of corporate relations.

Counsel, moreover, in the ardor of their contention that the portion of the opinion in the case of St. Louis, &c., R. R. Co. v. Terre Haute R. R. Co., *supra*, to which we have referred, was not part of the decision, and in their warm protest that this Court should not be "committed" to a decision or rule of law which it has not deliberately and directly recognized, have apparently overlooked the recent case of Louisville, &c., Ry. Co. v. Louisville Trust Co., 174 U. S. 552, (cited in our main brief, p. 67), in which the Court, speaking through the same member (Mr. Justice GRAY) says, at p. 572:

"In *St. Louis, Vandalia & Terre Haute Railroad v. Terre Haute & Indianapolis Railroad*, 145 U. S. 393, one of the parties relied on a provision of a statute of Illinois that it should not be lawful for any railroad company of Illinois, or its directors, to consolidate its road with any railroad out of the State, to lease its road to any railroad company out of the State, or to lease any railroad out of the State without having first obtained the written consent of all the stockholders of said roads residing in the State of Illinois, and any contract for such consolidation or lease which may be

made without having first obtained said written consent, signed by the resident stockholders in Illinois, shall be null and void.' *Of that statute this Court said:* 'It did not limit the scope of the power conferred upon the corporation by law, an excess of which could not be ratified or be made good by estoppel; but only prescribed regulations as to the manner of exercising corporate powers, compliance with which the stockholders might waive, or the corporation might be estopped, by lapse of time, or otherwise, to deny.' 145 U. S. 403."

These statements appear, therefore, to have furnished a rule of decision for this Court in a case subsequently arising, and it is idle to argue upon the assumption that the ruling is not established law, but merely a succession of *dicta*, in nowise binding.

In this regard and to correct the misapprehension under which counsel seem to labor in their effort to distinguish the case mentioned from that now before the Court, it may be of some value to state that the questions in the *Terre Haute case* were these:

It was insisted that the contract in question was void as to the plaintiff under the Illinois act requiring the assent of stockholders, and was also void as to both plaintiff (the Illinois corporation), and defendant (the Indiana corporation), as *ultra vires.*

The Court took up the Illinois statute first and *passed upon it*, holding as matter of general law that non-compliance with that statute rendered the contract voidable only. Then passing to the question of *ultra vires*, a decision was reached to the effect that the Indiana corporation had *certainly* acted beyond its corporate powers, whatever might be said in that regard of the Illinois company.

It would seem to follow that the Court intended to and did in fact *dispose* of the effect of statutes of the nature there considered, upon contracts entered into without a compliance with their requirements, even if the final determination of the case might have been reached without considering that question, but by only deciding that the Indiana corporation had exceeded its powers.

2. IT BY NO MEANS FOLLOWS THAT JUDGMENT CREDITORS MAY RAISE THE QUESTION BECAUSE THE STATE COURT HELD THAT THE CONSENT OF THE STOCKHOLDERS WAS NECESSARY TO THE AUTHORIZATION BY THE DIRECTORS OF INSTRUMENTS UNDER THE ACT OF 1880.

The contention of counsel that the deduction that judgment creditors could take advantage of non-compliance with the terms of the Act of 1880, "followed as a corollary" (brief, p. 21) from the ruling of the Supreme Court of California, that the instrument then before the court could not be made without the consent of the stockholders, needs only the answer that no other court has ever perceived the existence of this "corollary" or "essential and necessary result flowing from" what counsel, by similar reasoning, is pleased to term "the void character of the contract." Upon the contrary, the courts have everywhere held the opposite view, and held it as matter of general law.

3. COUNSEL'S ELABORATE ATTEMPT TO DRAW A DISTINCTION BETWEEN THE USE OF THE WORDS "VOID" AND "UNLAWFUL" IN STATUTES OF THE GENERAL NATURE UNDER DISCUSSION LEADS MERELY TO CONFUSION AND ABSURDITY.

They would have the Court take the view that while the stronger word "void," or the words "null and void," mean *voidable*, the weaker word "unlawful" should be held to mean, as counsel express it, "absolutely void;" *i. e.*, because the stronger expression has the weaker significance, the weaker expression should have the meaning indicated by the stronger one. This of course is clearly a *non sequitur;* and although reliance is placed upon the case of Holder v. Aultman, Miller & Co., 169 U. S. 81, for support, examination of that case will clearly show that the distinction claimed exists only in the mind of counsel.

It was held in that case at the suit of a foreign manufacturing company against its agent for proceeds of goods sold in the State, that where a statute invalidated contracts "made in this State," a contract not complete until approved in another State was not within the statute. The Court distinguished such a case from one where the legislative intent was to prevent the transaction of business in the State by a foreign corporation under circumstances prohibited, no matter where the contract might have been made. No distinction was made between the words "void" and "unlawful," such as counsel's argument might lead one to expect.

Upon the other hand, counsel again overlooking the full force and effect of the case of St. Louis, etc. R. R. Co. v. Terre Haute, etc. R. R. Co., *supra*, evidently failed to notice that the Statute of Illinois in question provided that "it shall not be *lawful*" for the performance of the acts therein mentioned without the consent

of the stockholders, and also, that in the event of failure to obtain such consent, the contracts or leases made should be "null and void." This Court particularly considered the words last quoted, and determined the effect of the statute without any direct reference to the words "it shall not be lawful;" and certainly this result could not have been obtained had the Court recognized in the words "it shall not be lawful" any such value as claimed by the learned counsel for respondents. Having held the lease voidable under the words "null and void," no attention was paid to the weaker expression in the statute.

4. THE CASES CITED BY RESPONDENTS' COUNSEL DEFINING THE RELATION OF STATE COURT DECISIONS TO THOSE OF THE FEDERAL COURTS ARE NOT MATERIAL.

A considerable number of cases additional to those heretofore noticed on the application for *certiorari* and referred to in our main brief (page 34), are cited by counsel for the respondents in support of their claim that the decision of the Supreme Court of California that judgment creditors may raise the questions contemplated by the Act of 1880, are controlling here. These cases are open to the same criticism as those which we have heretofore discussed.

They either involve a clear and undeniable construction of a State statute, the determination of a local rule of property or a question essentially and exclusively local, whether relating to a right or remedy granted or limited, or the validity of form and subsequent legal effect of an instrument *as such* under the statute under consideration and its com-

pliance with the recording acts. They are therefore without bearing upon the present inquiry.

It is equally clear we think, that cases involving the enforcement of contracts made without compliance with the statutes restraining foreign corporations from carrying on business within the State, unless certain conditions be complied with either before the commencement of that business or while it is being carried on, are not pertinent to the case at bar. They involve the performance of a local duty to the public consisting of acts to be done in the particular State and do not in anywise relate to the internal management or affairs of such corporations.

We may add that counsel's suggestion (brief, p. 49) that the bondholders should have intervened in this suit in order to make pertinent a discussion of their attitude, is clearly without force under the well known doctrine of equity, to the effect that the trustee stands for his beneficiaries, and has full power to enforce their rights. If the trustee acts in good faith and is otherwise competent, they have no place as intervenors in any suit between him and third parties relating to the trust estate. This is a doctrine particularly well known and continually applied in the foreclosure of railroad and other corporate mortgages.

C. WALTER ARTZ,
For Petitioner.

2429

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1900.

FREDERICK WILLIAMS, *Petitioner,*

vs.

GEORGE C. GAYLORD ET AL., *Respondents.*

The respondents respectfully submit the following in opposition to the granting of the writ of *certiorari* applied for by petitioner herein.

STATEMENT OF THE CASE.

On April 23, 1880, the Legislature of the State of California passed an act entitled, "An Act for the protection of stockholders in mining companies," Section 1 of which is as follows:—

"SECTION 1.—It shall not be lawful for the directors of any mining corporation to sell, lease, mortgage, or otherwise dispose of the whole or any part of the mining ground owned or held by such corporation, nor to purchase or obtain, in any way, any additional mining ground, unless such act be ratified by the holders of at least

two-thirds of the capital stock of such corporation. Such ratification may be made either in writing, signed and acknowledged by such stockholders, or by resolution duly passed at a stockholders' meeting called for that purpose."

Statutes of California 1880, p. 131.

At that time the policy of the State of California with reference to foreign corporations had been established by an express provision of its Constitution in terms as follows:—

"No corporation organized outside the limits of this "State shall be allowed to transact business in this State "on more favorable conditions than are prescribed by "law to similar corporations organized under the laws of "this State."

Constitution of Cal., Art. 12, par. 15.

These statutory and constitutional provisions were in full force at the time the instrument sued upon in this action was executed by the Gold Hill Mining Company under the circumstance hereinafter appearing.

The Gold Hill Mining Company was organized as a corporation under the laws of the State of West Virginia, June 23, 1890, for the avowed purpose of purchasing, operating, managing, and working mines in the State of California.

Record, pp. 197–198.

The trust deed sued upon in this action as a mortgage bears date July 1, 1890, and purports to be executed by the President and Secretary of the Gold Hill Mining Company. It is executed to G. Livingston Morse of the City of New York as trustee for the purpose of securing a prospective bond issue to the amount of $50,000, the property encumbered thereby being the Nevada City Quartz Mine and other property contiguous thereto situated in Nevada County, State of California.

The only authorization for the execution of this instrument appearing in the record is a resolution adopted at a meeting of the incorporators held July 25, 1890, before the organization of the corporation by the election of directors and officers of the corporation, before the company had either issued stock or acquired any property.

Record, p. 153.

There was no attempt to comply with the laws of California with reference to the ratification of the instrument, on the part of the stockholders, as required by the Act of 1880 above quoted.

Subsequently the Gold Hill Mining Company in the conduct of its mining operations in California became largely indebted to residents of that State for material, labor, and supplies. The respondents, Gaylord, Maddrill, and Rolfe, having obtained judgments against the company levied executions upon the property of the corporation, viz., the Nevada City Quartz Mine, and contiguous property, and at the execution sales became the purchasers of all such property.

Subsequent to these execution sales, and on November 23, 1897, the complainant, Frederick Williams, petitioner herein, a citizen of the State of New York, who had theretofore been substituted as trustee of the trust deed or mortgage in the place of G. Livingston Morse, deceased, commenced this action by filing a bill of foreclosure whereby he alleged that the defendant, the Gold Hill Mining Company, had executed the indenture as a mortgage or deed of trust; that it had made default in the performance of the terms and conditions of said instrument, and that the persons or parties other than said mining company impleaded as defendants, viz., respondents, Gaylord,

Maddrill, and Rolfe, had or claimed to have some interest or lien upon the premises covered by the indenture sought to be foreclosed in this suit as a mortgage.

The prayer of the bill was for a foreclosure of the indenture as a mortgage and for specific equitable relief.

The Gold Hill Mining Company having been duly served with process made default.

The other defendants, Gaylord, Maddrill and Rolfe, answered, setting up their status with reference to the property involved, as above specified, and further pleaded specially, *inter alia*, that the indenture was void because it had not been made in conformity with the requirements of the California statute heretofore quoted.

All of the issues are comprehensively stated in the opinion of Judge Morrow, who tried the cause, (Record, p. 127).

Upon trial of the action the Circuit Judge sustained the special defense of defendants Gaylord, Maddrill and Rolfe, above stated, held the indenture under consideration invalid for non-compliance with the California statute, and directed a dismissal of the bill of foreclosure.

That court in sustaining this defense and dismissing the bill, held:—

(1) That the instrument sued upon as a mortgage was not ratified in the manner prescribed by the California statute.

(2) That the Supreme Court of California had held repeatedly (*a*) that instruments of this character were absolutely void unless ratified in one of the methods prescribed by the statute; (*b*) that any one could take advantage of this fact, and that this defense was not limited to stockholders.

(3) That the Act applied to all mining corporations whether organized under the laws of California or elsewhere. That foreign corporations under the Constitution of the State were not permitted to do business therein on terms more favorable than those exacted from domestic corporations.

(4) That the duty of the Federal Court was to follow the decisions of the Supreme Court of California, construing the statute, and that its duty ended when the force and effect of these decisions were stated.

This view was sustained by the Circuit Court of Appeals. The opinions of the respective courts embodied in the record clearly indicate the inductive methods by which the legal conclusions were reached.

ARGUMENT.

No Federal question is involved in this case. The Circuit Court acquired jurisdiction solely by reason of the diversity of citizenship of the parties. The decision of the Circuit Court of Appeals is therefore final.

Petitioner seeks by this proceeding to secure from the Supreme Court of the United States the prerogative writ of *certiorari* in order that it may review the action of the Circuit Court of Appeals. The grounds relied upon by him to invoke the power of this court in his behalf may be briefly epitomized:—

(1) The decrees of the Circuit Court and Circuit Court of Appeals are contrary to law and the decisions of this (Supreme) Court; because they proceed upon the theory and decide that the decision of the State court permitting judgment creditors to set up and avail themselves of the benefit of an Act exclusively designed

and expressly stated to be for the benefit of stockholders in mining companies, is binding upon the Federal courts as a construction of a State statute by the highest court of said State as against a foreign corporation, the trustee of its mortgage and the *bona fide* holders of its negotiable bonds; when in fact, as your petitioner represents, said question is extrinsic to any construction of said statute, relates to general commercial law and has been long settled in a manner favorable to persons occupying the position of petitioner and the bondholders represented by him by numerous and prior decisions, some of which were rendered or concurred in by members of this court.

(2) That said mortgage was signed by officers owning more than two-thirds of the stock of said mining company and consenting thereto, and said mortgage was acquiesced in and accepted as valid by the stockholders of said company.

(3) That the matters involved in this case relate not to mere questions of local law or importance, but to questions of general and commercial law affecting vast interests of foreign corporations in various States of the Union, and the safeguards surrounding owners of their negotiable bonds authorized by the laws of the State creating the corporation as against subsequent creditors, whether by judgment or otherwise, renders this case eminently one in which a writ of *certiorari* should be granted.

(4) This case, moreover, involves the large amount of $50,000 of bonds, with interest thereon nearly equal in amount, owned by various persons who gave full value therefor.

We respectfully submit, that none of these specifications —if the broad and evidently labored generalizations may be so classified — brings petitioner within the oft repeated rule of this Court upon the subject of writs of *certiorari*. We may be pardoned for quoting from the decisions of this Court in this behalf:—

"It is evident that it is solely questions of gravity and "importance that the Circuit Court of Appeals should "certify to us for instructions, and it is only when such "questions are involved that the power of this Court to "require a case, in which the judgment and decree of the "Court of Appeals is made final, to be certified, can be "properly invoked. . . . . While this power is "co-extensive with all possible necessities and sufficient "to secure to this Court final control over the litigation in "all the courts of appeal, it is a power which will be spar-"ingly exercised, and only when the circumstances of the "case satisfy us that the importance of the question involved, "the necessity of avoiding conflict between two or more "courts of appeal and the Courts of the State, or some "matter affecting the interests of this nation in its internal "or external relations, demand such exercise."

Forsythe v. *Hammond*, 166 U. S. 506.

In the cases cited below this Court issued its writ of *certiorari* to review decisions of Circuit Courts of Appeal, but in each case stated with forceful precision that the writ was issued only because of extraordinary circumstances involved in the case.

Lau Ow Ben, 141 U. S. 583; 144 U. S. 47;

Ex parte Woods, 143 U. S. 202;

U. S. v. *Three Friends*, 166 U. S. 1.

The case here presented does not fall within any of the enumerated categories. Nevertheless, a brief analysis of the grounds relied upon by petitioner and the application to them of the principles of law which are necessarily

controlling may not be out of place, as the petition seems to be urged with earnestness and apparent sincerity. We take these grounds up for discussion:—

I.

Petitioner seeks to destroy the force of the rule, applied by the courts below in this case, that in dealing with state statutes the Federal Courts are bound to follow the interpretation given to them by the highest courts of the state, by the statement, *first*, that the state interpretation in the present instance is erroneous; *second*, that such interpretation is extrinsic to the statute, relates to *general commercial law*, and the principle involved has been settled by other courts in a manner favorable to petitioner; therefore, the Federal Courts are at liberty to disregard the decisions of the highest court of the state, and practically sit as appellate courts to review state decisions interpreting state statutes.

Upon an examination of the decisions of the Supreme Court of the State of California we find that the statute in question has been before that court a number of times. Its constitutional validity, construction, scope and effect, were established upwards of ten years ago, and long prior to the execution of the instrument sued upon in this action.

The language of the Supreme Court of California upon this subject is very clear. Says the Court:—

"We think that the provision of said Act goes to the "power or authority of the directors. It cannot be con- "strued to relate merely to their personal liability, for no "penalty is imposed upon them, and to so construe it would "be to practically nullify the Act. In our opinion the "directors in mining corporations have no power or author- "ity to convey the mining ground without the consent of "holders of two-thirds of the stock given as prescribed by "the Act; and it follows without such consent the title

" does not pass. And if this be so the question can be " raised by any one who connects himself with the title of " the corporation which owned the property, as well as by " the stockholders thereof. Nor can the consent of the " stockholders be presumed from the mere fact of the con- " veyance, whether under the corporate seal or not, for such " consent or ratification may be after the deed is executed, " and hence it is not necessarily or presumptively involved " in the execution of such deed."

McShane v. *Carter*, 80 Cal. pp. 310, 312, decided Sept. 3, 1889.

The rule established in *McShane* v. *Carter* was reaffirmed by express language of approval in *Pekin Mining Company* v. *Kennedy*, 81 Cal. 356, decided November 29, 1899, in which case the instrument assailed as not having been executed in compliance with the statute — was executed by a *foreign* corporation — i. e., one organized under the laws of the State of Illinois. The doctrine was again expressly affirmed as to the provision under consideration in *Granite Gold Mining Company* v. *McGinnis*, 118 Cal. 131, 137, decided September 10, 1897, and again in *Johnson* v. *California Lustral Co.*, 127 Cal. 284.

It thus appears that the settled law applicable to the case has been clearly announced by the State Court of last resort. The validity of the law, and its true construction, have been for many years clearly established and free from doubt.

There can be no question as to what is the general rule uniformly followed by the Federal Courts with reference to the binding force of State decisions. This rule has been tersely stated by this Court as follows :—

" Upon the construction of the Constitution and laws of " a State, this Court as a general rule follows the decisions " of her highest Court unless they conflict with or impair " the efficacy of some provision of the Federal Constitu- " tion or a rule of general commercial law. . . .

"Substantially conclusive effect is given to such decis-
"ions upon the construction of State statutes as affecting
"title to real estate within the State."

Gormley v. *Clark*, 134 U. S. 338.

Citations from the decisions of this Court might be multiplied indefinitely. We do not understand that counsel for petitioner denies the rule. The burden of his complaint is that the question at issue is one of "general commercial law," for the true solution of which the Federal Courts are not confined to the decisions of the Supreme Court of the State.

We fail to observe how a matter which is confessedly the proper subject of State legislation when once embodied in a statute can be classified as "general commercial law." It is essentially a local state statute.

What is meant by the term "general commercial law"?

"Commercial law is a system of jurisprudence acknowl-
"edged by all maritime nations, and upon no subject is it of
"more importance than that there should be, as far as prac-
"ticable, uniformity of decision throughout the world. . .

"Commercial law, says Bouvier, is a phrase employed
"to denote the branch of the law which relates to the
"rights of property and the relations of persons engaged
"in commerce. Persons engaged in commercial adven-
"tures, wherever they may have their domicile, have
"business relations throughout the civilized world, from
"which it results that commercial law is less local and
"more international than any other system of law, except
"the law of nations (p. 55). . . .

"State decisions in respect to titles to real estate and
"transfers of property, usually furnish the rule of deci-
"sion in the Federal courts, by virtue of the beforemen-
"tioned provision of the Judiciary Act; but the established
"practice is, that it does not apply except in matters of a
"strictly local character; that is to say, to the positive
"statutes of the States and the interpretations of the same
"by their own tribunals, including rights and titles to
"things having a permanent locality, such as real property,

"and that it does not extend to questions of general com-
"mercial law, from which it follows that where any contro-
"versy arises as to the liability of a party to a bill of
"exchange, promissory note or other negotiable paper, in
"one of federal courts, which is not determined by the
"positive words of a State statute, or its meaning as con-
"strued by the State Courts, the Federal Courts will
"apply to its solution the general principles of the Law
"Merchant, regardless of any local decision. 1 Daniel
"Neg. Inst. (2nd Ed.) sec. 10."

Railroad Company v. *National Bank*, 102 U. S. 14, 31, 55, 57.

This question was quite fully considered by this Court in a case where the inquiry was identical so far as this point is concerned with the case at bar, except only that the mortgage there considered was one upon personal property only. Said the Court:—

"The matter is not one of purely general commercial
"law. While chattel mortgages are instruments of general
"use, each State has a right to determine for itself under
"what circumstances they may be executed, the extent
"of the rights conferred thereby, and the conditions of
"their validity. They are instruments for the transfer
"of property, and the rules concerning the transfer of
"property are primarily at least a matter of State regula-
"tion.

Etheridge v. *Sperry*, 139 U. S. 266, 276.

See, also,

Wilson v. *Perrin*, 11 Circuit Court of Appeals, Rep., pp. 66, 68, and cases cited.

Brown v. *Furniture Co.*, 7 C. C. A. 225 (58 Fed. 286).

Counsel in his position employs the terms "foreign corporation," "negotiable bonds," and "*bona fide* holders," terms in frequent use in the Law Merchant, just as if this mere descriptive terminology earmarked the case as one of "general commercial law," and casts it into the mold of the "*lex mercatoria*."

These "negotiable bonds" are the evidences of an indebtedness purporting to be issued by the Gold Hill Mining Company, a foreign corporation. The validity of this indebtedness as such is not disputed. But these bonds are secured by a trust deed or mortgage upon real property situated in the State of California. It is the validity of *this* instrument that is assailed because it fails to comply with the laws of the State where the property affected by it is situated.

It is a familiar rule of the common law that the "*lex rei sitæ*" controls the sale, hypothecation, alienation, and descent of real property. The law of the place where the property itself is situated must necessarily be looked to for the purpose of determining the validity of a questioned transfer or encumbrance. The law of the *situs* and its interpretation by the highest court of the State is just as much a part of the contract as if they were incorporated into it. If one invests in mortgages, mortgage bonds, or real estate securities without ascertaining the condition of the title according to the law of the State where the property is situated he does so at his peril. If the instrument under which he claims is fatally defective under the law of the place no amount of *bona fides*, however persistently urged, will cure or atone for the defect. A deed which might be valid in West Virginia might be wholly worthless to pass title to property in California, and the decision of the question would in no sense involve a consideration of the principles of "general commercial law."

That the State of California had the right to prescribe the manner in which instruments affecting the title to real property in that State should be executed, and to define

what should and what should not be considered a valid transfer or encumbrance of such property, ought not to be seriously questioned.

"It is a principle too well established to admit of dis-
" pute at this day, that to the law of the State in which
" the land is situated we must look for the rules which
" govern its descent, alienation, and transfer and for the
" effect and construction of its conveyances."

McGoon v. *Scales*, 9 Wall. 23, quoted in
Brine v. *Hartford Fire Ins. Co.*, 96 U. S. 627.

"The power of the State to regulate the tenure of real
" property within her limits, and the modes of its acquisi-
" tion and transfer, and the rules of its descent, and the
" extent to which a testamentary disposition of it may be
" exercised by its owners, is undoubted. It is an estab-
" lished principle of law, everywhere recognized, arising
" from the necessity of the case, that the disposition of
" immovable property, whether by deed, descent, or any
" other mode, is exclusively subject to the government
" within whose jurisdiction the property is situated. (*Mc-
" Cormick* v. *Sullivant*, 10 Wheat. 202.) The power of the
" State in this respect follows from her sovereignty within
" her limits, as to all matters over which jurisdiction has
" not been expressly or by necessary implication transferred
" to the Federal Government. The title and modes of
" disposition of real property within the State, whether
" *inter vivos* or testamentary, are not matters placed under
" the control of the federal authority. Such control
" would be foreign to the purposes for which the federal
" government was created, and would seriously embarrass
" the landed interests of the State."

United States v. *Fox*, 94 U. S. 315, 320.

The principle is announced and followed in numerous cases.

Jackson ex dem. v. *Chew*, 12 Wheat. 152;
Hinde v. *Vattier*, 5 Pet. 396, 400;
Livingston v. *Moore*, 7 Pet. 469, 542;
Suydam v. *Williamson*, 24 How. 427, 433;
Townsend v. *Todd*, 91 U. S. 452, 453;

Ober v. *Gallagher*, 93 U. S. 199, 207;
Hall v. *Decuir*, 95 U. S. 485, 500;
Barrett v. *Holmes*, 102 U. S. 651, 655;
Bucher v. *Cheshire R. R. Co.*, 125 U. S. 555, 582;
German Bank v. *Franklin Co.*, 128 U. S. 526, 538;
Randolph v. *Quidnick Co.*, 135 U. S. 457, 463;
Cross v. *Allen*, 141 U. S. 528, 538;
Merchants' Bank v. *Pennsylvania*, 167 U. S. 461, 462;
Hartford F. Ins. Co. v. *Chicago M. & St. R. R. Co.*, 175 U. S. 91, 100 (1899).

"Since the ordinary administration of the law is carried "on by the State Courts it necessarily happens that by the "course of their decisions certain rules are established "which become rules of property and action in the State "and have all the effect of law, and which it would be "wrong to disturb. This is especially true with regard to "the law of real estate and the construction of State consti-"tutions and statutes. Such established rules are always "regarded by the Federal Courts no less than by the State "Courts themselves, as authoritative declarations of what "the law is.

Burgess v. *Seligman*, 107 U. S. 20, 33;
B. & O. Railroad v. *Baugh*, 149 U. S. 368, 372.

The special feature of the rule announced by the Supreme Court of California in *McShane* v. *Carter*, which is particularly obnoxious to counsel for petitioner, is that it permits parties other than stockholders to raise the question of the validity of the conveyance. He maintains that other States having similar statutes have held that only stockholders can complain of a failure to comply with their terms, and that the logic and reason is with the other States. This is quite immaterial. Each State determines for itself what rules shall apply to the disposition of property within its limits. That two States may have precisely the same statutes on a

given subject, and their respective courts place constructions diametrically opposed is no reason why Federal interposition should be invoked to compel uniformity, and force upon one State a rule sanctioned by another because the inherent logic and persuasive force of one decision may in the opinion of the Federal Courts entitle it to be accepted as the rule to be applied in both States, or in all States where there are similar local statutes.

This Court has heretofore had occasion to consider this class of arguments, and it is conclusively disposed of as follows:—

"As to the construction of a State statute we generally "follow the rulings of the highest Court of the State. . . . . "So, when the highest Court of a State affirms that a con- "veyance made by a debtor to a trustee for the benefit of "creditors is valid under the statutes of that State, we "should ordinarily in any case involving the validity of "such conveyance follow that ruling, *even though that statute* "*was common to many* States and in others a different rul- "ing had obtained."

Randolph v. *Quidnick Co.*, 135 U. S. 457, 463.

"The construction by the Courts of a State of its consti- "tution and statutes is, as a general rule, binding on the "Federal Courts. We may think the Supreme Court of a "State has misconstrued its constitution or its statutes, but "*we are not at liberty to set aside its judgments.* That Court "is the final arbiter as to such questions."

Forsyth v. *Hammond*, 166 U. S. 506, 518.

A case arising under the recording Acts of Connecticut is quite instructive on this point. We quote from the opinion of the Court:—

"The question depends upon the recording Acts of the "State of Connecticut; and we are bound to follow the "decisions of the Courts of that State in their construction "of these Acts, if there has been a uniform course of "decisions respecting them."

The Court then cites Connecticut cases which "are clear and decisive against the validity of the mortgage in question." Citing the case of *Bramhall* v. *Flood*, 41 Conn. 72, the Court continues:—

"It is there held that the mortgage must describe the "debt intended to be secured, and that it is not sufficient "that the debt be of such a character that it might have "been secured by the mortgage had it been truly described.

"*In most of the States a mortgage like the one before us, "reciting a specific indebtedness, but given in fact to secure "advances or indorsements thereafter to be made, is a valid "security*, and would be good to secure the $6,000 actually "advanced before other incumbrances were placed upon "the property. (Citing cases.)

"We should be quite willing to give the appellant the "benefit of this principle to the extent of his actual "advances, *but the contrary rule seems to be so well settled in "Connecticut that we are not at liberty to do so.*"

Townsend v. *Todd*, 91 U. S. 452, 453.

And in the chattel mortgage case of *Etheridge* v. *Sperry* heretofore cited the Court said:—

"We are aware that there is a great diversity in the rul- "ings on this question by the Courts of the several States, "but whatever may be our individual views as to what the "law ought to be in respect thereto, there is so much of a "local nature entering into chattel mortgages that this "Court will accept the settled law of each State as decisive "in respect to any case arising therein."

139 U. S. 266, 276.

It is true that in other States statutes similar to the Statute of April 23, 1880, have been construed less harshly than in California, but this fact is of no moment here. It cannot avail petitioner.

Where different States have adopted the same statutes, and their courts differ in construction, the Federal courts administer the law of each, notwithstanding seeming inconsistencies.

Shelby v. *Guy*, 11 Wheaton, 361.

"Nor does it matter that in courts of other States . . . "a different interpretation may have been adopted. If "such be the case, the courts of the United States will, in "conformity with the same principle, follow the different "ruling, so far as it affects title in those States. The "interpretation within the jurisdiction of one State becomes "a part of the law of that State, as much so as if incor- "porated into the body of it by the Legislature. If, there- "fore, different interpretations are given in different States "to a similar local law, that law, in effect, becomes, by the "interpretations, so far as it is a rule for our action, a "different law in one State from what it is in the other. "'That the Statute laws of the States,' says Mr. Justice "Johnson, in delivering the opinion of this court in *Shelby* "v. *Guy*, 'must furnish the rule of decision of this court, "'so far as they comport with the Constitution of the "'United States, in all cases arising within the respect- "'ive states, is a position that no one doubts. Nor is it "'questionable that a fixed and received construction of "'their respective statute laws, in their own courts, makes, "'in fact, a part of the statute law of the country, however "'we may doubt the propriety of that construction. It is "'obvious that this admission may at times involve us in "'seeming inconsistencies—as where States have adopted "'the same statutes, and their courts differ in the con- "'struction. Yet that course is necessarily indicated by "'the duty imposed upon us, to administer as between "'certain individuals, the laws of the respective States, "'according to the best lights we possess of what those "'laws are.'"

Christy v. *Pridgeon*, 71 U. S. (4 Wall.) 196, 203.

"The construction so far as contract obligations incurred "under it are concerned, constitutes a part of the law as "much as if embodied in it. So far does this doctrine "extend that when a statute of two States, expressed in "the same terms, is construed differently by the highest "courts, they are treated by us as different laws, each "embodying the particular construction of its own State, "and enforced in accordance with it in all cases arising "under it. (*Christy* v. *Pridgeon*, 4 Wall. 196, and *Shelby* "v. *Guy*, 11 Wheat. 361.) The statute, as thus expounded, "determined the validity of all contracts under it."

Louisiana v. *Pilsbury*, 105 U. S. 278, 294.

"The fact that similar statutes are allowed different "effects in different States is immaterial.

"As observed by Mr. Justice Field, speaking for this "court, 'The interpretation within the jurisdiction of one "'State becomes a part of the law of that State, as much "'so as if incorporated into the body of it by the Legis-"'lature. If, therefore, different interpretations are given "'by different States to a similar local law, that law in "'effect becomes by the interpretations, so far as it is a "'rule for our action, a different law in one State from "'what it is in the other.'"

Chicago Union Bank v. *Kansas City Bank*, 136 U. S. 223, 235.

Because of the rule thus stated, many of the authorities cited by petitioner are without application to the case at bar. Thus in *Campbell* v. *Argenta G. & S. M. Co.*, 51 Fed. Rep. 1 (Circuit Court), the opinion states in terms that it differs from the decision of the California court. In that case the Circuit Court was not controlled by any prior interpretation of the Montana statute involved.

In the case of *Sioux City R. R. Co.* v. *Trust Co.*, 82 Fed. Rep. 124 (Circuit Court of Appeals), the Court, per Sanborn, J., announce the rule that where the highest court of a State has determined the extent of the powers and liabilities of corporations, created under its laws, that decision is conclusive in the national courts in all cases involving no questions of general or commercial law and no question of right under the Federal Constitution.

Accordingly the mortgage involved was held valid under the Iowa statute.

In the case of *The Vigilancia*, 73 Fed. 452 (Circuit Court of Appeals), the court, per Wallace, J., decided that the decision was based upon the interpretation placed upon cognate statutes by the highest courts of the State of New York.

In the case of *G. V. B. Mining Co.* v. *First Nat. Bank of Hailey*, 95 Fed. 23 (Circuit Court of Appeals), Judge Hawley, in deciding that the corporation there before the court was estopped to deny the validity of the contract, bases the opinion of the court upon a law of the State of New York, which was construed by the courts of that State differently from the decision of the California court. No statute of Idaho (where the land was situated) was involved.

In the case of *Nevada Nickel Syndicate* v. *Nat. Nickel Co.*, 96 Fed. 144 (Circuit Court), no statutory provision was involved.

We deem it not improper to state that the record in *McShane* v. *Carter*, which we have examined, shows that every point of law made upon the merits in this case was urged as well upon the Supreme Court of California in that case (see Record Supreme Court of California in *McShane* v. *Carter*, No. 12,578). The decision in *McShane* v. *Carter* is not to be dealt with as a judicial inadvertence; it is the deliberate and absolute determination by the court of last resort of California of every point of law presented upon the merits in this case.

It is urged that the statute in question was not intended to apply to foreign corporations, and the Gold Hill Mining Company being such, its acts are not to be measured by the Act in question. It will also be observed as noted in the opinion of the Circuit Court of Appeals, that the Supreme Court of California necessarily passed upon this identical question in the case of *Pekin Mining Company* v. *Kennedy*, 81 Cal. 355, 362, where the instrument declared void was executed by a foreign corporation.

This question was fully considered by both trial and appellate courts, and the conclusion reached was adverse to petitioner, as will appear by reference to the respective

opinions of these courts. There is but little if anything to be added to what is there said.

It appears that the Constitution of the State of California by express provision (Art. XII, Sec. 15), declared the policy of the State concerning foreign corporations, by directing that such corporations should not transact business in California under less restraint than domestic corporations.

This Constitution went into effect July 4, 1879.

The act under discussion was approved April 23, 1880, and took effect upon its passage.

It is entitled: "AN ACT FOR THE FURTHER PROTECTION OF STOCKHOLDERS IN MINING COMPANIES," and provides:—

"Section 1. It shall not be lawful for the directors of "any mining company, to sell, lease, mortgage or otherwise "dispose of the whole or any part of the mining ground "owned or held by such corporation." . . .

Stats. of 1880, pp. 131, 132.

The language of the statute clearly covers all corporations, foreign as well as domestic.

We claim, therefore, that the Act must be construed as intended to enforce the mandate of the Constitution. To construe it as applicable to domestic corporations only, would be to make it antagonistic in spirit and principle to the provision of the Constitution; to construe it as of universal application will make it consistent and harmonious with the Constitution. These alternatives being presented, it is the duty of the Court to so construe the statute as to place it in harmony with the Constitution.

"If there were room for two constructions, both equally "obvious and reasonable, the Court must in deference to "the Legislature of the State, assume that it did not over-"look the provisions of the Constitution. . . . . Our "duty, therefore, is to adopt that construction, which "without doing violence to the fair meaning of the words "used, brings the statute into harmony with the provisions "of the Constitution."

Grenada Co. Supervisors v. *Brogden*, 112 U. S. 261, 268;
Cooley's Constitutional Limitations, p. 218;
Presser v. *Illinois*, 116 U. S. 252, 269.

We contend that any fair construction of the statute must maintain it in harmony with the Constitution as a piece of legislation applicable to foreign as well as domestic corporations.

Petitioner seeks to treat the statute of April 23, 1880 (Stats. 1880, p. 131), as if it were ambiguous, of doubtful meaning requiring forced construction, as if there were occasion for reference to the title of the Act to aid in construing its doubtful meaning. We submit that there is no occasion justifying the labored effort of petitioner in this connection. The language of the statute is clear; its meaning free from doubt.

When there is no ambiguity in a statute itself, there can be no necessity for resorting to the title. It cannot be used to extend or restrain positive provisions contained in the statute, nor can it control express words in the statute.

Hadden v. *The Collector*, 5 Wall. 107, 110.

Petitioner is in error as well in stating that the two Acts (Stats. 1880, p. 131, and Stats. 1880, p. 134), relate to the same subject matter.

The distinctive subject matters of these Acts are stated in the opinion of the lower Court (Record, pp. 114, 115), which shows clearly that the case is not one coming within the rule of *People ex rel* v. *Jackson*, 30 Cal. 427.

If a close analysis and construction of the statutes (Stats. of 1880, p. 133,) were to be made it would, we think, have to be conceded that the Legislature made distinctive provisions to govern the various operations of mining corpo-

rations in the State of California over which it had the power to exercise control.

Thus, realizing that it had full power to provide that no corporation, domestic or foreign, should convey or incumber real property within its territorial limits except in the manner prescribed by statute, it formulated Section 1 of the Act applicable to corporations, domestic and foreign without exception.

Realizing further that it had no power to control the internal management of foreign corporations, it formulated Sections 2 and 3 of the Act, applicable in terms "to each and every mining corporation in this State."

This construction would be proper, fair, and in accordance with well established rules.

There is a wise and well understood rule applicable in interpreting a legislative enactment, which is to the effect that where terms are reasonably capable of two constructions, the one of which is, the other of which is not, consistent with the fundamental and paramount law, delegating or restraining the authority to enact, that construction must be adopted which renders it effectual rather than that which in whole or in part defeats its operation.

Freight Discrimination cases, 95 N. C. 431;
See, also, *People* v. *Frisbie*, 26 Cal. 135.

The amendment to the Act approved March 9, 1897 (Stats. 1897, c. 92,) (Record. pp. 15, 16,) referred to by petitioner, is consistent with every provision of the former act, and re-enforces many of its chief provisions.

The amendment merely provides:—

1. How the statutory ratification by stockholders may be evidenced by secretaries of mining corporations, and,

2. That no one except a stockholder shall be permitted to urge any objection to the *acquisition of any additional ground or other property by such corporation.*

In other words, in full contemplation of the decision of *McShane* v. *Carter*, the Legislature of California amended the statute involved only by providing to the effect that no one except a stockholder might urge an objection to the *acquisition* of any additional ground or other property by such corporation. All the other provisions of the former statute, directing that it shall not be lawful for the directors of any mining corporation to sell, lease, mortgage, or otherwise dispose of the whole or any part of the mining ground owned or held by such corporations, etc., are substantially re-enacted.

Statutes of 1897 (Bancroft-Whitney Ed.) p. 96.

According to well settled rules of construction this (with the modifications referred to) constitutes an express legislative concurrence in and approval of the rule established in *McShane* v. *Carter*, so far as it applies to conveyances or incumbrances made by mining corporations of title to mining ground.

The re-enacting of the prohibitory provisions above referred to, implying an express approval of the expositions thereof made by the courts, also reaffirms the policy of the State in the premises.

The constitution and legislation of a State may validly provide for the control of any transaction or series of transactions affecting property within its limits by a foreign corporation. A corporation created elsewhere than in California can assert its corporate existence and powers in California only by comity of that State and subject to its regulations.

Conceding that the State of California could not effectively prescribe rules for controlling the internal affairs of foreign corporations, there is still no doubt of its power to validly prescribe regulations to control foreign as well as domestic corporations in any and all transactions made affecting property situated within her State limits.

The opinion of the Judges of the Circuit Court on this point (*vide* Transcript of Record, 115), as well as that of the Appellate Court, are quite exhaustive of the subject. We add just a few more to the citations made by them.

"A corporation has no implied authority to do an act "in a foreign State which is not permitted by the laws of "the latter to individuals generally. The law of comity "merely enables a body of corporators chartered by one "State to act in a corporate capacity in another State, *sub-*"*ject to all the laws and regulations of the latter.*"

Morawetz on Corporations, Sec. 964.

The United States Supreme Court, speaking through Mr. Justice White, said:—

"The State of California has power to exclude foreign "insurance companies altogether from her territory, "whether they were formed for the purpose of doing a "fire or marine business. She has the power, if she "allows any such companies to enter her confines, to deter-"mine the conditions upon which the entry shall be made. "And as a necessary consequence of her possession of "these powers, she has the right to enforce any conditions "imposed by her laws as preliminary to the transaction of "business within her confines by a foreign corporation, "whether the business is to be carried on through officers "or through ordinary agents of the company, and she has "also the further right to prohibit a citizen from contract-"ing within her jurisdiction with any foreign company "which has not acquired the privilege of engaging in "business therein, either in his own behalf or through an "agent empowered to that end. *The power to excludl* "*embraces the power to regulate, to enact and enforce ale* "*legislation in regard to things done within the territory of*

" *the State which may be directly or incidentally requisite in* " *order to render the enforcement of the conceded power effica-* " *cious to the fullest extent*, subject always, of course, to the " paramount authority of the Constitution of the United " States."

(The italics are ours.)

Hooper v. *California*, 155 U. S. 648, 655.

Petitioner does not claim that there is any express provision making any reservation in his favor from the provisions of that Act of April 23, 1880.

The opinion rendered in *Bank of B. N. A.* v. *Madison*, 99 Cal. 125, is specially instructive here, because it reaffirms the policy of the State concerning foreign corporations as declared by the provisions of its constitution. Says the Court:—

" The State has indicated as its policy that corporations " that engage in banking, whether foreign or domestic, " shall at stated intervals publish to the world, for the pro- " tection of those who may desire to deal with them, cer- " tain information concerning their assets and liabilities, " and it is incumbent upon every corporation that would " engage in such business to make a substantial compli- " ance therewith. The fact that the plaintiff is a foreign " corporation, and that it is for that reason more difficult " to comply with the statute, does not exempt it from this " obligation, for the Constitution (Art. XII, Sec. 15) declares " that ' no corporation organized outside the limits of this " ' State shall be allowed to prosecute business within this " ' State on more favorable conditions than are prescribed " ' by law to similar corporations organized under the laws " ' of this State.' "

Bank of British North America v. *Madison*, 99 Cal. 125, 133,

Bearing in mind the constitutional provision applicable, the language of the statute enacted immediately after its adoption providing in general terms for the control of every (any) mining corporation and construing these two

laws in harmony, we think the judicial mind should be irresistibly moved to hold that the statute was intended to be of general application. To hold otherwise would be to hold that the Legislature instead of acting in aid of the Constitution deliberately passed a statute which would necessarily operate in violation of it.

The rule essentially fair and fitting to our American system of political and judicial control is that when a foreign individual or corporation comes to the State of California, all its transactions there are subject to and circumscribed by the same limitations as those of every other person within the State. It is bound by the laws of the State which apply and by the decisions of the State Courts thereon. A very graphic description of the situation is presented in an opinion of Mr. Justice Brewer:—

" In *Barnes* v. *The District of Columbia*, 91 U. S. 540, this " Court after referring to the case from 21 Michigan *supra*, " and the doctrine stated therein, observed that 'The " 'authorities establishing the contrary doctrine, that a city " 'is responsible for its mere negligence, are so numerous " 'and so well considered that the law must be deemed to " 'be settled in accordance with them,' citing in support a " long list of authorities. The authorities which support " a different view are collected in *Hill* v. *Boston*, 122 Mass. " 344. But even if it were a fact that the universal voice " of the other authorities was against the doctrine announced " by the Supreme Court of Michigan, the fact remains that " the decision of that Court, undisturbed by legislative " action, is the law of that State. Whatever our views may " be as to the reasoning or conclusion of that Court is imma- " terial. It does not change the fact that its decision is the " law of the State of Michigan, binding upon all its Courts, " and all its citizens, and all others who may come within " the limits of the State. The question presented by it is " not one of general commercial law; it is purely local in its " significance and extent. It involves simply a considera- " tion of the powers and liabilities granted and imposed " by legislative action upon cities within the State. While " this Court has been strenuous to uphold the supremacy

" of Federal law, and the interpretation placed upon it by " the Federal Courts, it has been equally strenuous to " uphold the decisions by State Courts of questions of " purely local law. There should be, in all matters of local " nature, but one law within the State; and that law is not " what this Court might determine, but what the Supreme " Court of the State has determined. A citizen of another " State going into Michigan may be entitled under the Fed- " eral Constitution to all the privileges and immunities of " citizens of that State; but under that Constitution he can " claim no more. He walks the streets and highways in " that State entitled to the same rights and protection, but " none other, than those accorded by its laws to its own " citizens."

Detroit v. *Osborne*, 135 U. S. 492, 498.

II.

Petitioner contends that the trust deed or mortgage was signed by *officers* owning more than two-thirds of the stock of the Gold Hill Mining Company and that the mortgage was acquiesced in and accepted as valid by the stockholders of said company.

The indenture under consideration cannot be taken out of the general rule upon the contention that there was equitable ratification of any matters constituting an estoppel *in pais*.

We repeat for convenient reference under this head the language of the Supreme Court of the State of California in *McShane* v. *Carter*, applicable here:—

" We think that the provision of said act goes to the " power or authority of the directors. It cannot be con- " strued to relate merely to their personal liability, for no " penalty is imposed upon them, and to so *construe it would* " *be to practically nullify the act.* In our opinion the " directors of mining corporations have no power or " authority to convey the mining ground without the con- " sent of holders of two-thirds of the stock given as " prescribed by the act, and it follows without such con-

"sent the title does not pass. And if this be so the "question can be raised by any one who connects himself "with the title of the corporation which owned the prop- "erty, as well as by the stockholders thereof."

McShane v. *Carter*, 80 Cal. 312 (Sept, 1889).

This decision has been much criticised because of the sweeping, radical character of its terms. But there can be no doubt that it expresses the deliberate judgment of our State court of last resort delivered in bank, and does so with exceptional precision and emphatic clearness. It declares:—

First. That directors of mining corporations *have no power to convey* mining ground without the consent of holders of two-thirds of the stock.

Second. That such consent of stockholders must be given *as prescribed by the act.*

Third. That without such consent *the title does not pass.*

Fourth. That the question can be raised *by any one who connects himself with the title of the corporation, as well as by the stockholders thereof.*

This clearly and unequivocally means that unless the conveyance of mining ground made by a mining corporation is ratified by two-thirds of its stockholders, and is so ratified as prescribed by the act, such conveyance is void. "No title passes."

It follows then, we contend, conclusively that because the indenture under consideration was intended to operate as a deed of trust conveying the title of mining ground owned by a mining corporation to the plaintiff, and because *no ratification by stockholders as prescribed by the statute* was shown, therefore, *no title passed.* The instrument

was void. Being void it could not be ratified by any person; not even in the interest of one who has *bona fide* parted with an adequate valuable consideration, placing reliance upon its validity.

The principle is that a void act can not be ratified.

"Confirmation may make good a voidable or defeasible "estate but cannot operate upon or aid an estate which is "void in law but only confirms its infirmity. *Confirmatio "est nulla ubi donum precedens est invalidum, et ubi donatio "nulla est, nec valebit confirmatio.* The only exception to "this rule is where the confirmation is the act of the "sovereign will." (Comyn's Digest, Vol. 3, page 139; D. I., p. 140; *Blessing* v. *House*, 3 Gill & John. 290.)

Branham v. *Mayor and Common Council, etc.*, 24 Cal. 585, 605.

In an action brought in New Jersey to enforce a promissory note made in that State, it was held that since the note was actually made on a Sunday, though it bore date on a Saturday, it was void by virtue of the Sunday law, which enacts that: "No traveling, worldly employment or business shall be done on a Sunday." The fact that part of the interest had been paid could not affect the case. The Court said:—

"There is undoubtedly a class of claims which, having "a moral but no legal efficacy, can be the subject of ratifi- "cation; but it is to be remembered that the effect of a "ratification is to impart validity to the original agree- "ment. Such an act creates no new obligation; it simply "extends the continuance of, or legalizes, one already in "existence. The maxim of the law is, '*Omnis ratihabitio "retrotrahitur et mandato priori æquiparatur.*' It follows "therefore, as a consequence which is entirely unavoid- "able, that there can be no such thing in law, strictly "speaking, as the ratification of a transaction which, at "the time of its performance, was prohibited by statute. "The parties cannot legalize that which the law has "declared illegal. It is competent to them to impart a "new efficacy to a voidable act, but they have no power to

" give life to an act which, from reasons of public policy, " has been ordained by the legislative authority to be " absolutely void."

Reeves v. *Butcher*, 31 N. J. Law, 224, 227.

After the validity of the statute (April 23, 1880) and its construction were declared by the courts of last resort of California in *McShane* v. *Carter*, the construction became, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself.

The United States Supreme Court discussed another prohibitive statute of a like character in the following language :—

" This interpretation of Sec. 7 of the Act of April 16, " 1869, accompanied all bonds subsequently issued into " the hands of whoever took them, whether a *bona fide* " holder or not. This Court must recognize this decision " of the Supreme Court of Illinois as an authoritative " construction of the statute made before the bonds " were issued and to be followed by this Court."—(Citing cases.)

German Bank v. *Franklin County*, 128 U. S., 526, 538.

We cite the following additional authorities illustrative of the principle that an Act, void *ab initio*, cannot be ratified.

In an action by an insurance company upon a note given by defendant for stock in the company and for premium subject to call by the directors of the company, it was held that there could be no recovery on the ground that the company was a foreign corporation, and had commenced business in violation of the statute which forbids all foreign insurance companies from doing business in the State until the requirements of the law applicable to such companies have been complied with. The Court said :—

"To permit the company, when they admit that they "have disregarded all these requirements, to recover, "would be for the courts to disregard the clearly expressed "will of the General Assembly, and to say what it has said "shall be unlawful is and shall be lawful and binding. "To enforce the payment of this note would be virtually "to repeal a plain enactment of the Legislature.

"When the Legislature prohibits an Act, or declares that "it shall be unlawful to perform it, every rule of inter- "pretation must say that the Legislature intended to inter- "pose its power to prevent the Act; and as one of the "means of its prevention, that the Court shall hold it void. "This is as manifest as if the statute had declared that it "should be void. To hold otherwise would be to give the "person or corporation or individual the same rights in "enforcing prohibited contracts as the good citizen who "respects and conforms to the law. To permit such con- "tracts to be enforced, if not offering a premium to violate "a law, certainly withdraws a large portion of the fear that "deters men from defying the law. To do so places the "person who violates the law on an equal footing with "those who strictly observe its requirements. That this "contract is absolutely void as to appellee we entertain no "doubt."

Cincinnati Mutual H. A. Co. v. *Rosenfeld*, 55 Ill. 85, 91.

"It is not material to inquire whether this bank of Brest "was organized or not. It is enough to know that it was "one of the large batch of banks established under a gen- "eral law of Michigan, which was recommended to the "popular sanction, and that numerous banks were organized "under it, all of which turned out to be banks without cap- "ital. They were all subject to what was called the Safety "Fund Act, which, by the thirty-first section provided that "no moneyed corporation subject to this Act shall issue "any bill or note of the said corporation unless the same "shall be made payable on demand and without interest. "The draft in question was in violation of that law, as it "was not made payable on demand. It was therefore an "instrument which the corporation had no right to create, "and being void it cannot be considered as payment to the "plaintiff."

Davis v. *The Bank of River Raisin*, 4 McLean 387.

"In *Wiggin* v. *Rush*, 12 Johnson 310, it was held that "notes void *ab initio* are equally so in the hands of a *bona* "*fide* holder; but the holder in this instance had notice. "The Safety Fund Act was a public law, and all who deal "in the paper of the bank are bound to take notice of its "provisions. If a corporation exceeds its powers, its acts "are void, and they are not made good by an alleged want "of notice of a defect of power."

Root v. *Wallace*, 4 McLean, p. 8.

See, also,

Root v. *Goddard*, 3 McLean 102.

In *Miller* v. *Stammon*, which was an action to enforce payment on a contract for the sale of wine—the wine having been delivered, but plaintiff not having a distiller's license as required by an ordinance of Chicago—the defendant set up in his answer that the contract was void. The Court upheld defendant in this contention, and said, speaking through Mr. Justice Brewer:—

"The general rule of law is, that a contract made in viola- "tion of a statute is void; and that when a plaintiff cannot "establish his cause of action without relying upon an "illegal contract he cannot recover. Pollock, Principles of "Contract, pp. 253, 260; *Penn* v. *Bornman*, 102 Ill. 523; "*Alexander* v. *O'Donnell*, 12 Kans. 608; *Gunter* v. *Leckey*, "30 Ala. 591; *Kennedy* v. *Cochran*, 65 Maine 594; *Bank of* "*the United States* v. *Owens*, 27 U. S. 2 Peters, 527, 539; "*Pangborn* v. *Westlake*, 36 Ia. 546, 549; *Harris* v. *Runnels*, "53 U. S. 12 How. 79, 84."

Miller v. *Stammon*, 145 U. S. 421, 426.

In a case in which a lease by one railroad company to another was held to be beyond the authority of one of the companies and therefore void, Mr. Justice Miller, in delivering the opinion of the Court, said:—

"It is argued in support of the decree that, though the "contract of lease may be void, so that no action could "originally have been sustained upon it, there has been "for ten years such performance of it, in the use, possession,

"and control of plaintiff's road and its franchises by the "defendants that they cannot now be permitted to repudi- "ate or abandon it. That it now presents one of a class of "cases which hold that where a void contract has been so "far executed that property has passed under it and rights "have been acquired under it, the courts will not disturb "the possession of such property or compel restitution of "money received under such a contract.

"Undoubtedly there are such decisions of courts of "high authority, and there is such a principle, very sound "in its application to appropriate cases. But we under- "stand the rule in such cases to stand upon the broad "ground that the contract itself is void, and that neither "what has been done under it, nor the action of the Court, "can infuse any vitality into it. Looking at the case as one "where the parties have so far acted under such a con- "tract that they cannot be restored to their original con- "dition, the Court inquires if relief can be given "independently of the contract, or whether it will refuse "to interfere as the matter stands. We know of no well "considered case where a corporation, which is a party "to a continuing contract which it had no power to make, "seeks to retract and refuses to proceed further, can be "compelled to do so. As was said in *Thomas* v. *Railroad* "*Company* (a case so often in point here), 'Having entered "'into the agreement it was the duty of the company to "'rescind or abandon it at the earliest moment. This duty "'was independent of the clause in the contract which gave "'them the right to do it. Though they delayed its per- "'formance for several years it was nevertheless a rightful "'act when it was done. Can this performance of a legal "'duty, a duty both to the stockholders of the com- "'pany and to the public, give to plaintiff a right of "'action? Can they found such a right on an agreement "'void for want of corporate authority and forbidden by "'the policy of the law? To hold that they can is, in our "'opinion, to hold that any act performed in execution of "'a void contract makes all its parts valid, and that the "'more that is done under a contract forbidden by law "'the stronger is the claim to its enforcement by the "'courts.'"

Penn. R. R. Co. v. *St. Louis etc. R. R. Co.*, 118 U. S. 290, 316.

In a case decided by the United States Supreme Court it was held that a lease given by a railway company of its entire property, was *ultra vires* and void. It was argued on behalf of the plaintiff that even if the contract sued on was void because *ultra vires* and against public policy, yet that "having been fully performed on the part of the "plaintiff and the benefits received by the defendant, for "the period covered by the declaration, the defendant was "estopped to set up the invalidity of the contract as a "defense to this action to recover the compensation agreed "on for that purpose."

The Court, in overruling this contention, after citing numerous cases in support of its views, said:—

"The view which this Court has taken of the question "presented by this branch of the case, and the only view "which appears to us consistent with legal principles, is "as follows:—

"A contract of a corporation which is *ultra vires*, in the "proper sense, that is to say, outside the object of its crea- "tion, as defined in the law of its organization, and "therefore beyond the powers conferred upon it by the "legislature, is not voidable only, but wholly void, and of "no legal effect. The objection to the contract is, not "merely that the corporation ought not to have made it, "but that it could not make it. The contract cannot be "ratified by either party, because it could not have been "authorized by either. No performance on either side "can give the unlawful contract any validity, or be the "foundation of any right of action upon it.

"When a corporation is acting within the general scope "of the powers conferred upon it by the Legislature, the "corporation, as well as persons contracting with it, may "be estopped to deny that it has complied with the legal "formalities which are prerequisites to its existence or to "its action, because such requisites might in fact have "been complied with. But when the contract is beyond "the powers conferred upon it by existing laws, neither "the corporation, nor the other party to the contract, can "be estopped by assenting to it, or by acting upon it, to "show that it was prohibited by those laws."

. . . . . .

" The ground, and the limits of the rule concerning the " remedy, in the case of a contract *ultra vires*, which has " been partly performed, and under which property has " passed, can hardly be summed up better than they " were by Mr. Justice Miller, in a passage already quoted, " where he said that the rule 'stands upon the broad " 'ground that the contract itself is void, and that noth- " 'ing which has been done under it, nor the action of the " 'court, can infuse any vitality into it.' "

Central Trans. Co. v. *Pullman's Car Co.*, 139 U. S. 24, 59.

See also *Leavitt* v. *Palmer*, 3 N. Y. 19.

Mercantile paper made void *ab initio* by a statute is void in the hands of a *bona fide* holder.

Vallett v. *Parker*, 6 Wendell, 615;

City of Aurora v. *West*, 22 Ind. 28;

Bailey v. *Tabur*, 5 Mass. 286;

Glenn v. *Farmers Bank*, 70 N. C. 191.

When a statute forbids banking companies to issue notes on time or on interest, notes issued on time or on interest by such companies are absolutely void.

Swift v. *Beers*, 3 Denio, 70;

Tyler v. *Yates*, 3 Barb. 222.

A loan made by the director of a bank to the bank itself, in violation of a statutory provision, is absolutely void and cannot be enforced.

Penn v. *Bornman*, 102 Ill. 523;

See also Pomeroy on Contracts, 2d Ed., sec. 286;

McCormick v. *National Bank*, 165 U. S. 538;

The California Bank v. *Kennedy*, 167 U. S. 362, 371.

Petitioner's contention that the indenture was, in fact, actually ratified, is refuted by an examination of the record, and the record further shows the indenture void, because it was not authorized by the directors of the corporation.

Petitioner in his brief refers to pages 153 and 154 of the record, claiming that the same show compliance with the provisions of the Act of 1880, page 131. A reference to those pages of the record shows the minutes of a certain meeting held on June 25, 1890, and it clearly appears that this meeting was only an informal meeting of the corporators of the newly created corporation, *held without any notice*, for the purpose of organizing the new corporation.

The contention of appellant that this was a meeting of stockholders clearly appears to be a far-fetched afterthought; but even if this claim were tenable no valid ratification of the indenture at bar is shown, because the ratification, to be valid, was required to be as prescribed by the statute; and the statute provides that the ratification must be made by a resolution duly passed at a stockholders' meeting *called for that purpose*. It seems clear that the Legislature passed the Act of 1880 with a definite purpose, and stated distinctly a number of requirements mandatorily imposed to make valid a conveyance of mining ground by a mining corporation. The Court of last resort of California, having sustained the validity of this Act and construed it as hereinbefore stated, compliance with all the requirements of the statute was necessary to be shown. It seems clear, also, from the language employed in that statute that the Legislature must be held to have intended to prescribe distinctly that the ratification was to be made at a formal meeting of stockholders, and not at an informal meeting of corporators who might or might not be stockholders within the true meaning of the term. The Legislature certainly had the power to prescribe such requirements; and if they were advisedly prescribed, as is held by the Court of last resort of this State, then those requirements must be held to be indispensably necessary.

We think the contention of petitioner on this head is foreclosed by the apt language quoted from *McShane* v. *Carter*. The California statute, as construed by the California Court of last resort, demands that the ratification must be made by the stockholders *as prescribed by the act*. Such ratification must be either—

(a) In writing signed and acknowledged by such stockholders, or

(b) By resolution duly passed at a stockholders' meeting called for that purpose.

Stats. of Cal. 1880, p. 131.

These formalities required by law are indispensable and must not be omitted.

Daniel Rhea v. *Daniel Rhenner*, 26 U. S. (1 Peters) 105.

Pages 153 and 154 of the record referred to do not show due compliance with the Act, and we contend that the court below, therefore, properly found that there was no ratification of the indenture under consideration.

Again referring to pages 153 and 154 of the record, we find the minutes of a certain meeting of the corporators of the newly created corporation, The Gold Hill Mining Company, which show the business transacted at the meeting. The corporators met; *first* waived notice of the meeting, *next* received proof of the final incorporation of the company, *then* passed a resolution:—

"On motion of W. W. Tucker, seconded by R. H. Petti-
"grew, Jr.," to the effect:
"That the said Gold Hill Mining Company issue one
"hundred *first mortgage bonds* of the denomination of *five*
"*hundred dollars* each, each bond bearing date July 1st,
"1890, etc.," *thereupon* elected G. L. Morse trustee for
"the bondholders, and appointed him to draw up a

" proper bond, and *finally after* all this had been done,
" 'On motion of Mr. J. Shoecraft, seconded by G. L.
" 'Morse, it was voted that the incorporators of the Gold
" 'Hill Mining Company be named as directors of said
" 'company.' "

Now whatever else may be claimed as the effect of this meeting and of these proceedings, it surely must be conceded that the resolution referred to relating to the prospective mortgage, was not adopted or passed by the directors of the corporation, The Gold Hill Mining Company, for there were no directors of the corporation named or in existence at the time when that resolution was passed.

The record in this case further shows that at no time was any resolution adopted by the Board of Directors of the corporation, The Gold Hill Mining Company, corresponding to the resolution of the corporators above referred to; the Board of Directors never did provide for or sanction such a mortgage as was specified in the corporators' resolution. The indenture which is the basis of this action never was authorized by any resolution or action of the Board of Directors of the Gold Hill Mining Company. Under the defenses pleaded in this action (Record, pp. 38, 39, 49), plaintiff was required to show such authorization, and having failed to do so must be defeated. The law upon this phase of the case seems clear. In a similar case it was said:—

"The only authority upon which the President and
" Secretary acted was the resolution passed at the pre-
" liminary meeting of stockholders, before organization
" of the Board of Directors, and that authorization was
" insufficient to support a finding of due and regular
" execution is a proposition scarcely requiring authority
" in its support; *Gashwiler* v. *Willis*, 33 Cal. 12; 91 Am.

" Dec. 607; *Alta Silver Mining Co.* v. *Alta Placer Min. Co.*, " 78 Cal. 629."

Blood v. *La Serena etc.*, 113 Cal. 221, 226.

"The President has not the power, by virtue of his " office, to mortgage the property of the company (see " generally *Bliss* v. *Kaweah C. & I. Co.*, 65 Cal. 502), nor " has the Secretary such power by virtue of his office " (*Blood* v. *Maceuse*, 38 Cal. 594; 99 Am. Dec. 435); " nor have both together the power which neither has " separately, nor have the stockholders such power (*Gash-* " *wiler* v. *Willis*, 33 Cal. 12; 91 Am. Dec. 607). The " powers of a corporation must be exercised, and its " power controlled by its Board of Directors (Civ. Code, " Sec. 305); the decision of a majority of the directors, " 'made when duly assembled,' being valid as a corpo- " rate act (Civ. Code, Sec. 308). The Board must be " duly assembled (*Harding* v. *Vandewater*, 40 Cal. 78). " And their transaction should be recorded (Civ. Code, " Sec. 397; *Southern Cal. Assn.* v. *Bustamente*, 52 Cal. " 192). The directors when not acting as a board, have " not the necessary power (*Gashwiler* v. *Willis*, 33 Cal. 18; " 91 Am. Dec. 607). The absence of a resolution of the " board renders the instrument invalid (*Southern Cal. Assn.* " v. *Bustamente*, 52 Cal. 192)."

Alta Silver Mining Co. v. *Alta Placer Mining Co.*, 629, 632.

See, also,

Smith v. *Dorn*, 96 Cal. 82, 83;
Salfield v. *Sutter L. I. & R. Co.*, 94 Cal. 548, 549.

In the case of *Blood* v. *La Serena etc.*, *supra*, the Court held that evidence might be adduced to show that the corporation was prevented by matters establishing an *estoppel in pais* from attacking the validity of the mortgage there involved. But the mortgage there involved was one made on the part of an ordinary commercial corporation covering agricultural lands only.

III.

Counsel for petitioner in his petition asserts that "the matters involved in this case relate not to mere "questions of local law or importance, but to a question "of general and commercial law affecting vast interests of "foreign corporations in various States of the Union and "the safeguards surrounding owners of their negotiable "bonds authorized by the laws of the State creating the "corporation, as against subsequent creditors whether by "judgment or otherwise, renders this case eminently one "in which a writ of *certiorari* should be granted."

We respectfully submit that this begs the whole question. That the case presented is not one of general or commercial law, has been fully demonstrated. That the matters involved affect "vast interests" of foreign corporations in various States of the Union, is a gratuitous statement not warranted by anything before this Court.

We venture the assertion that foreign corporations which conduct business in the loose and slipshod manner shown by this record are not very numerous.

If they are, and investors have been careless and negligent enough to purchase their wares without investigating the state of the title to the lands deeded as security for the bonds issued, they must pay the penalty and suffer such loss as flows from a failure to observe the laws of the State where such corporations acquire and attempt to transfer and encumber real property.

The fact that the amount of the bond issue is $50,000, and that interest has accumulated thereon, is not a factor in this case. The bondholders have their remedy against the Gold Hill Mining Company. The validity of the indebtedness is not questioned.

We respectfully submit that there is no merit in the petition and that it should be denied.

CURTIS H. LINDLEY,
HENRY EICKHOFF,
Solicitors for Respondents.

No. 208.

Brf. of Lindley & Eickhoff for Respondents.

FILED
MAR 7 1902
JAMES H. McKENNEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1901.

Filed Mar. 7, 1902.

FREDERICK WILLIAMS, *Petitioner,*

vs.

GEORGE C. GAYLORD, CHARLES E. MADDRILL AND DWIGHT T. ROLFE, *Respondents.*

ON CERTIORARI TO UNITED STATES CIRCUIT COURT OF APPEALS, NINTH CIRCUIT.

Brief in Behalf of Respondents.

CURTIS H. LINDLEY,
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By.....

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STATEMENT OF THE CASE.

The essential features of this case from the standpoint of both fact and law may be succinctly epitomized by us without seriously challenging the statement presented by Petitioner.

The Gold Hill Mining Company was organized June 23, 1890, under the laws of the State of West Virginia for the purpose among others of, "purchasing, operating, man-"aging and working mines in the State of California."

Record, p. 105.

It was to have two offices,—

"Its principal office to transact its business in the City "of New York, in that city, and a branch office in which "also to transact business in the City of Nevada, or at the "mines of the company near said city in the State of Cali- "fornia where the mines and property now owned by the "said corporators and others are located."

Record, p. 106.

On April 23, 1880, the Legislature of the State of California passed an Act entitled "An Act for the further pro- "tection of stockholders in mining companies," section 1 of which Act is as follows:—

"SECTION 1. It shall not be lawful for the directors "of any mining corporation to sell, lease or otherwise "dispose of the whole or any part of the mining ground "owned or held by such corporation, nor to purchase or "obtain in any way any additional mining ground unless "such act be ratified by the holders of at least two-thirds "of the capital stock of such corporation. Such ratifica- "tion may be either in writing signed and acknowledged "by such stockholders or by resolution duly passed at a "stockholders' meeting called for that purpose."

At that time the policy of the State of California with reference to foreign corporations had been established by an express provision of its Constitution in terms as follows:—

"No corporation organized outside the limits of this "State shall be allowed to transact business in this State "on more favorable conditions than are prescribed by law "to similar corporations organized under the laws of this "State."

Const. Cal., Art. 12, par. 15.

This act of the Legislature and the constitutional provision above quoted were in full force at the time of the

organization of the Gold Hill Mining Company and the execution of the instrument sought to be foreclosed in this action.

The constitutional validity, construction, scope and effect of the statute had been established and defined by the Supreme Court of California prior to the organization of the Gold Hill Mining Company.

It had been held by that Court that the provisions of the statute in question went to the power and authority of the directors; that without the consent of the stockholders *given in the manner prescribed by the act* there was no *authority* or *power* in the directors to execute the conveyance; that an instrument executed without such compliance was void and no title passed; that the consent of the stockholders could not be presumed from the mere fact of the conveyance, or from its formal execution; that judgment creditors could take advantage of the noncompliance with the statute and that the act applied to foreign mining corporations in dealing with their mining ground situated within the State of California.

In framing the charter and organizing the corporation the incorporators of the Gold Hill Mining Company and the constituency of the corporation thereafter formed must be deemed to have contracted with reference to the laws of California and with reference to the interpretation of such laws placed thereon by the Supreme Court of that State so far as concerned its transactions involving its real property in California.

The trust deed sued upon in this action as a mortgage bears date July 1, 1890, and purports to be executed by

the president and secretary of the Gold Hill Mining Company. It is executed to G. Livingston Morse of the City of New York as trustee for the purpose of securing a prospective bond issue to the amount of $50,000, the property encumbered thereby being the Nevada City Quartz Mine and other property contiguous thereto situated in Nevada County, State of California.

The only authorization for the execution of this instrument appearing in the record is a resolution adopted at a meeting of the incorporators held July 25, 1890, before the organization of the corporation by the election of directors and officers of the corporation, before the company had either issued stock or acquired any property.

Record, p. 80.

There was no attempt to comply with the laws of California with reference to the ratification of the instrument, on the part of the stockholders, as required by the Act of 1880 above quoted.

Subsequently the Gold Hill Mining Company in the conduct of its mining operations in California became largely indebted to residents of that State for material, labor, and supplies. The respondents, Gaylord, Maddrill, and Rolfe, having obtained judgments against the company on mechanics' and material men's liens, levied executions upon the property of the corporation, viz., the Nevada City Quartz Mine, and contiguous property, and at the execution sales became the purchasers of all such property.

Subsequent to these execution sales, and on November 23, 1897, the complainant, Frederick Williams, petitioner herein, a citizen of the State of New York, who had there-

tofore been substituted as trustee of the trust deed or mortgage in the place of G. Livingston Morse, deceased, commenced this action by filing a bill of foreclosure whereby he alleged that the defendant, the Gold Hill Mining Company, had executed the indenture as a mortgage or deed of trust; that it had made default in the performance of the terms and conditions of said instrument, and that the persons or parties other than said mining company impleaded as defendants, viz., respondents, Gaylord, Maddrill, and Rolfe, had or claimed to have some interest or lien upon the premises covered by the indenture sought to be foreclosed in this suit as a mortgage, which interest or lien was alleged to be subsequent to the lien of the indenture sought to be foreclosed.

The prayer of the bill was for a foreclosure of the indenture as a mortgage and for specific equitable relief.

The Gold Hill Mining Company having been duly served with process made default.

The other defendants, Gaylord, Maddrill and Rolfe, answered, setting up their status with reference to the property involved, as above specified, and further pleaded specially, *inter alia*, that the indenture was void because it had not been made in conformity with the requirements of the California statute heretofore quoted.

All of the issues are comprehensively stated in the opinion of Judge Morrow, who tried the cause.

Record, p. 53.

Upon trial of the action the Circuit Judge sustained the special defense of defendants Gaylord, Maddrill and Rolfe, above stated, held the indenture under considera-

tion invalid for noncompliance with the California statute, and directed a dismissal of the bill of foreclosure.

That court in sustaining this defense and dismissing the bill, held:—

(1) That the instrument sued upon as a mortgage was not ratified in the manner prescribed by the California statute.

(2) That the Supreme Court of California had held repeatedly (*a*) that instruments of this character were absolutely void unless ratified in one of the methods prescribed by the statute; (*b*) that any one could take advantage of this fact, and that this defense was not limited to stockholders.

(3) That the Act applied to all mining corporations whether organized under the laws of California or elsewhere.

(4) That the duty of the Federal Court was to follow the decisions of the Supreme Court of California, construing the statute, and that its duty ended when the force and effect of these decisions were stated.

This view was sustained by the Circuit Court of Appeals. The opinions of the respective courts embodied in the record clearly indicate the inductive methods by which the legal conclusions were reached.

Opinion of Circuit Court. Record, p. 53.

Opinion of Circuit Court of Appeals. Record, p. 169.

Petitioner attacks the rulings and decisions of the trial and appellate courts upon the following grounds:—

(1) The Act of the Legislature of California was intended solely for the benefit of stockholders and judgment creditors can not take advantage of a noncompliance with its terms.

(2) The act does not apply to foreign corporations.

(3) The construction placed upon the statute by the Supreme Court of California is opposed to the rule followed by other Courts of greater or equal dignity is unsound in principle, and should be ignored.

(4) The decision of the Supreme Court of California to the effect that judgment creditors may take advantage of the Act of 1880 is not binding upon Federal Courts, either as constructive of that statute or determinative of a local rule of property.

(5) The acts of the incorporators authorizing the execution of the instrument sued upon should be deemed a sufficient compliance with the law.

While petitioner elaborates these propositions and urges several subordinate, and from his standpoint, cognate principles, the foregoing outlines the real and substantial controversies in the case.

ARGUMENT.

The order in which the questions involved should be approached in argument is of no serious importance if the logical sequences are preserved. We suggest the following division of the subjects and order of presentation:—

I. The California Statute of 1880 and its interpretation by the Court of last resort of that State.

(*a*) The unlawfulness of contracts of the character sued upon unless ratified in one of the methods prescribed by the statute.

(*b*) The parties who may take advantage of noncompliance with its terms.

II. Its applicability to foreign corporations.

III. The duty of the Federal Courts to follow the State rules of interpretation.

IV. The acts relied upon by petitioner as constituting a substantial compliance with the statute as to ratification.

I.

The California statute of 1880, and its interpretation by the court of last resort of that State.

As the incorporators of the Gold Hill Mining Company in their charter specified that the purpose of the incorporation was to purchase, operate, manage and work mines in the State of California, they necessarily contracted with reference to the laws of that State, and must be assumed to have known the laws of such State.

Pinney v. *Nelson*, U. S. Sup Ct. Dec. 2, 1901; 22 Sup. Ct. Reporter, 52.

The construction placed upon such laws by the State courts of last resort is just as much a part of them, knowledge of which is imputed as if such interpretation were incorporated bodily into the statutes; such construction is a part of the statute.

Leffingwell v. *Warren*, 2 Black, 599, 603;

Christy v. *Pridgeon*, 4 Wall. 196;

Bucher v. *Cheshire R. R. Co.*, 125 U. S. 555, 582;

Chicago Union Bank v. *Kansas City Bank*, 136 U. S. 223, 235.

The incorporators, therefore, knew at the time they organized the Gold Hill Mining Company that such a law existed upon the California statute books, and that it had prior to that time been interpreted by the Supreme Court of California, as follows:—

"We think that the provision of said Act goes to the "power or authority of the directors. It cannot be con- "strued to relate merely to their personal liability, for no "penalty is imposed upon them, and to so construe it would "be to practically nullify the Act. In our opinion the "directors in mining corporations have no power or au- "thority to convey the mining ground without the consent "of holders of two-thirds of the stock given as prescribed "by the Act; and it follows without such consent the title "does not pass. And if this be so the question can be raised "by any one who connects himself with the title of the "corporation which owned the property, as well as by the "stockholders thereof. Nor can the consent of the "stockholders be presumed from the mere fact of the con- "veyance, whether under the corporate seal or not, for such "consent or ratification may be after the deed is executed, "and hence it is not necessarily or presumptively involved "in the execution of such deed."

McShane v. *Carter*, 80 Cal. 310, 312, decided Sept. 3, 1889.

The incorporators also knew that the Supreme Court of California, sitting in bank, had in a later case approved the doctrine of the McShane-Carter case and applied the rule there announced to a deed executed by a mining corporation organized under the laws of another State (Illinois) which deed purported to convey mining ground situated within the State of California.

Pekin Mining Company v. *Kennedy*, 81 Cal. 356, decided Nov. 29, 1889.

The doctrine announced in *McShane* v. *Carter* was approved in the following subsequent cases:—

Pekin Mining Company v. *Kennedy*, 81 Cal. 356;

Granite Gold Mining Company v. *McGinness*, 118 Cal. 131, 137;

Johnson v. *California Lustral Co.*, 127 Cal. 289.

Curtin v. *Salmon River Co.*, 130 Cal. 351.

It will be observed that the language of the section under consideration differs materially from the language found in similar statutes of other States to be hereafter commented on. Under the California law, contracts of the character of those under consideration are declared to be *unlawful* unless certain things are done. Or, as the statute reads, "*It shall not be lawful* for the directors of any mining corporation," etc. As was said by the Supreme Court of California in a case involving the same act:—

"The statute declares *unlawful* a mortgage or other dis-"position by the directors of the whole or any part of the "mining ground of a mining corporation, except upon the "ratification of the holders of two-thirds of the stock and "it must be enforced according to its intent."

Johnston v. *California Lustral Co.*, *supra.*

Since the decision by the Circuit Court of Appeals in this cause the Act in question has again been under consideration by the Supreme Court of California, from whose opinion we quote the following:—

"Section 1 of that act is as follows: 'It shall not be law-" 'ful for the directors of any mining corporation to sell, " 'lease, mortgage, or otherwise dispose of the whole " 'or any part of the mining ground owned or held by such " 'corporation, nor to purchase, or obtain in any way any " 'additional mining ground, unless such act be ratified by

"'the holders of at least two-thirds of the capital stock of "'such corporation.' This section does not confer upon "the stockholders any power to mortgage the property of "the corporation, or to authorize the directors to mortgage "it, and it is a familiar rule that ratification cannot give "effect to an unauthorized or invalid act, unless the per- "son or body making the ratification could in the first in- "stance have authorized the act. The corporate power and "business of the corporation must be exercised by the "board of directors (Civ. Code, sec. 305), and the stock- "holders cannot, by their own act, mortgage its property. "(*Gashwilder* v. *Willis*, 33 Cal. 11.) Any mortgage, to be "effective, must be made by the board of directors, but "under the provisions of the above act of 1880 the consent "of two-thirds of the stockholders is requisite to its valid- "ity. The stockholders are thus made a component part "of the power to make a mortgage effective, but cannot, "by any act of their own, make a mortgage, or validate one "that has not been previously authorized and executed by "the board of directors."

Curtin v. *Salmon River etc. Co.*, 130 Cal. 351.

With this exposition of the law before us if the Gold Hill Mining Company were a California corporation and the instrument in question had been executed by it in the manner shown in the record, how would it be dealt with by the California courts? There is no room for debate as to this. The courts would refuse to foreclose the mortgage. It would be an unlawful contract and therefore of no legal value. It would fall as the instruments fell in *McShane* v. *Carter*, and *Pekin M. Co.* v. *Kennedy*, *supra*.

Counsel for petitioner has in his argument failed to discriminate between a contract which by statute is declared to be *void*—which some courts construe to mean *voidable* only—and those which are declared by statute to be *unlawful*—which latter class of contracts all courts hold to be

absolutely void. This distinction is clearly pointed out in

Holder v. *Aultman Miller & Co.*, 169 U. S. 81;

Distinguishing Seamans v. *Temple Co.*, 105 Mich. 400.

The employment of the term "unlawful" in a statute establishes a public policy.

In comparing statutes of other States upon kindred subjects and analyzing decisions based upon them, we must therefore bear in mind the language of the California statute, the marked difference in the two classes of contracts, and the canons of construction applicable to them respectively. There is no lack of authority from other states upon the following propositions:—

(1) Statutes which declare certain classes of contracts void unless ratified by a certain proportion of stockholders are intended for the benefit of stockholders and the acts are voidable at their election only, or may be validated under the doctrine of estoppel.

(2) Contracts which are performed under statutes of the type last named may be ratified in any manner which will have the effect of producing an estoppel on the part of the stockholder.

But this concession by no means suggests that the California act of 1880 is of this type, or that the courts of California are committed to the interpretation of this class of statutes found in other States.

It may be conceded that if the California statute in question were before the Federal courts for construction and such courts were untrammeled by any previous interpretation thereof by the State court of last resort, the Federal tribu-

nals would be entirely at liberty to place such a construction thereon as they saw fit. Even in such a situation, however, the Federal courts in the construction of this particular statute would not blindly follow the conclusions reached by themselves and the State courts in construing statutes far less drastic and prohibitory than the one presently under consideration.

We may here note that in every one of the Federal cases cited by petitioner's counsel in support of the principal contention upon which he relies, the courts either announced that their construction of the State statutes in question was in harmony with the interpretation by the State courts, or in consonance with the policy of the State as defined in legislation and judicial decisions, or the State courts had never been called upon to construe the statute, that duty devolving for the first time on the Federal courts—a condition of affairs altogether different from that confronting us in the case at bar.

Although the fact may not serve any practical purpose under the view we take of the prohibitory character of the California statute, yet we may note in passing that there is respectable authority for applying the doctrine of *ultra vires* in its true sense to corporate acts requiring the participation of stockholders as condition precedent to the making of a valid contract under statutes which simply declare such contracts *void* unless stockholders' consent is obtained. A brief glance at some of the decisions will serve a double purpose. While furnishing precedents for the California rule, it aids the demonstration that the questions involved are local in their

nature and essentially those which each State may determine and has determined for itself regardless of rulings in other States.

In New York we find the following principles established:—

In an action by a receiver of a corporation to set aside a mortgage which had not been ratified by the requisite number of stockholders, it was urged that the action might be maintained by stockholders, but not by creditors or receivers. Said the court in commenting on the statute and sustaining the action by the receiver:—

"It is noticeable that there is thus called into action the "corporation as an artificial entity, the body of the trustees "as its agent and lastly the constituent members of the "corporation or the several individuals composing it. To "each of these a duty is assigned, and to make valid the "transaction now before us it is plain that something more "than corporate action was required. The corporation "might become a party to the mortgage and the trustees di- "rect its officers to execute it, but there still must be the "assent of the stockholders."

Vail v. *Hamilton*, 85 N. Y. 453.

Speaking of this case, the same court in a later one said:—

"In the case cited the court affirmed a judgment setting "aside at the instance of a receiver a mortgage executed by "a corporation organized under the act of 1848, on the "ground that the assent of the requisite number of stock- "holders had not been obtained. This case is an authority "for the proposition that the assent of the stockholders is "an indispensable condition to the creation of a valid "mortgage under the act of 1864."

Rochester Savings Bank v. *Averill*, 96 N. Y. 467.

The Circuit Court of Appeals of the Ninth Circuit thus states the effect of the New York decisions:—

"In the Vail case there was no assent given as required "by the statute or in any other manner, and the court held "the mortgage to be invalid. In the Rochester Bank case "it was held as in all the cases that such assent is an indis- "pensable condition of the creation of a valid mortgage, "but where such assent was not given at the time the mort- "gage was executed it would be validated in the absence of "any intervening rights by a subsequent assent, which "would operate as of the time of the execution of the "mortgage and make it valid."

G. V. B. Mining Co. v. *First National Bank*, 95 Fed. 23, 31.

The decision in this case is one upon which petitioner places great stress. It may not be out of place to here remark with regard to it that the court reached its conclusions as to the rule announced by "following the reason "and spirit of the decisions in the State of New York."

95 Fed. 23, 32.

When the same tribunal considered the case at bar, it followed the reason and spirit of the decisions in the State of California.

It may not be inappropriate at this point to again invite attention to the difference in the language employed in the California statute and that found in the laws of other States dealing with cognate subjects.

It will be observed from a consideration of the various cases cited by petitioner's counsel that, generally speaking, the statutes of various States upon the subject under consideration differ materially from the California statute. We may illustrate: The statute under consideration in the New York cases of *Vail* v. *Hamilton*, 85 N. Y. 853, and *Rochester Savings Bank* v. *Averill*, 96 N. Y. 467, permitted corporations of certain classes to mortgage their real estate,

"provided that the written assent of stockholders own-
"ing at least two-thirds of the capital stock of such
"corporation shall be filed in the office of the Clerk of the
"County where the mortgaged property is situated."

The Montana statute discussed in *Campbell* v. *Argenta G. & S. M. Co.*, 51 Fed. 1, provides that

"the board of trustees or officers of any mining corporation
"organized under the provisions of Montana laws shall
"not have power to sell, lease, mortgage or otherwise dis-
"pose of their mining ground unless they shall first obtain
"the consent of the stockholders by convening a meeting,
"due notice of which shall be given."

The Michigan statute under consideration in *Beecher* v. *Marq. & Pac. R. M. Co.*, 45 Mich. 103, is as follows:—

"No alienation, diversion, sale or mortgage of any or
"any part of the mine, works, real estate of franchise of any
"corporation mentioned in the first section of this act shall
"have any force or effect or pass any title thereto or inter-
"est therein unless expressly authorized by the vote of
"three-fifths in interest of the entire stock of said company
"actually present or legally represented at some meeting of
"stockholders called and notified," etc.

In some cases statutes declare that the acts done without the consent of the stockholders shall be "null and void," or "absolutely void," or "invalid," or that the directors must not do a certain thing without the consent of the stockholders, or they may do a certain act if authorized or approved by a certain proportion of its stockholders.

It is to statutes thus worded that the courts have applied rules of construction declaring that such acts which are within the general powers of the corporations and are performed by it without the requisite action of the stockholders are voidable only and not void.

On the other hand the California statute provides that *it shall not be lawful* for the directors of mining corporations to mortgage, etc., unless the act be ratified in a certain manner.

Is there not a marked distinction in the legal effect of the language used in different classes of statutes?

When the legislature declares that a certain act shall be unlawful unless done in the manner and under the conditions specified, the fact that the prohibited act is not *malum in se* is of no consequence. Public policy requires the enactment of many laws restricting the performance of acts and defining methods by which business may be carried on, which are not based upon any intrinsic immorality or illegality in the act itself.

As this court has said:—

"The distinction between *malum in se* and *malum prohibitum* has long since been exploded."

Gibbs v. *Baltimore Gas Company*, 130 U. S. 396, 411.

See, also,

Pennington v. *Townsend*, 7 Wend. 276.

Many States of the Union have enacted laws making it unlawful for foreign corporations to do business in the State unless they previously comply with the requirements of the law governing such corporations.

There is an abundance of authority supporting the doctrine that the acts of such corporation done or performed without complying with such State laws are *illegal—unlawful*—and no rights of property or action could arise out of them, although intrinsically such acts are untainted with a suggestion of immorality and are within the ordinary powers of the corporation.

Cary-Lombard Co. v. *Thomas*, 92 Tenn. 587;
Dudley v. *Collier*, 87 Ala. 431;
Farrier v. *New Eng. Mtg. Co.*, 88 Ala. 275;
Dundee Mtge. and Trust Co. v. *Nixon*, 95 Ala. 318;
Aetna Ins. Co. v. *Harvey*, 11 Wis. 395;
In re Comstock, 6 Fed. Cases 244 (No. 3078).

As to the validity of contracts in general which are by statute made unlawful, we cite

Buckley v. *Humason*, 16 L. R. A. 423;
Hoffman v. *McMullen*, 83 Fed. 372, 375;
Mill & Lumber Co. v. *Hayes*, 76 Cal. 387, 390;
Gardner v. *Tatum*, 81 Cal. 370;
C. M. & St. P. Ry. Co. v. *W. St. L. & P. Ry. Co.*, 61 Fed. 993;
Pennington v. *Townsend*, 7 Wend. 276.

But it is hardly necessary at this late day to cite authorities in support of the principle that an illegal contract is absolutely void and cannot form the basis of judicial proceedings; and that this illegality vitiates the contract between the immediate parties, as well as in respect to third parties. "*Ex dolo malo non oritur actio.*" Tested by the California statute, and the construction placed upon it by the Supreme Court of that State, the mortgage in question is illegal, and cannot be enforced.

It is true that in the case of *St. Louis, etc. R. R.* v. *Terra Haute etc, R. R.* 145 U. S. 393, where the statute cited contained the clause, "It shall not be lawful"—this court employed the language quoted by the learned counsel for petitioner at pages 15 and 16 of his brief to the effect that the

Illinois statute of February 16, 1865, "would seem to have "been enacted for the protection of such stockholders alone "and intended to be availed of by them only." This remark of the court as to what "would seem" to be the effect of the Illinois statute was evidently intended to state what was shown to the court to have been the ruling of the Illinois Supreme Court in the case of *Thomas* v. *Citizens' Railway,* 104 Ill. 462, cited at the end of the paragraph quoted (145 U. S. 403) wherein the Illinois Supreme Court had construed a similar act.

Mr. Justice Gray by the language quoted, therefore intended to state only what was shown to have been the construction placed upon a similar statute by the court of last resort of the jurisdiction which controlled the controversy there referred to. Moreover, Mr. Justice Gray is at pains to state that the decision of this court as expressed by his opinion is not to be regarded as an approval of the ruling referred to. He proceeds by saying at page 404:—

"It is unnecessary, however, to express a definitive opin- "ion upon the question whether the contract between these "parties was beyond the corporate powers of the *plaintiff*, "because, as is established by the decisions of this court, "already cited, a contract beyond the corporate powers of "either party is as invalid as if beyond the corporate "powers of both, *and the contract now in question was "clearly beyond the corporate powers of the defendant.*"

The judgment of the court was:—

"Upon this state of facts, for the reasons above stated, "the plaintiff, considered as a party to the unlawful con- "tract, has no right to invoke the assistance of a court of "equity to set it aside."

What the court therefore *held* was that the contract was void under the *Indiana law*. What the court *intimated but*

expressly declined to rule was that an opposite decision might have been reached if the court had been compelled to rest its decision upon the Illinois statute, because it would then have been concluded by the decision of a court of last resort in *Illinois.*

The general expressions employed in the course of the opinion must be considered in connection with the decision announced:—

"The counsel for the defendant in error urge, in oppo-
"sition to this rule of construction, some *dicta* of the court,
"in the case of *Marbury* v. *Madison.* It is a maxim, not to
"be disregarded, that general expressions, in every opin-
"ion, are to be taken in connection with the case in which
"those expressions are used. If they go beyond the case,
"they may be respected, but ought not to control the judg-
"ment in a subsequent suit, when the very point is present-
"ed for decision. The reason of this maxim is obvious.
"The question actually before the court is investigated
"with care, and considered in its full extent. Other prin-
"ciples which may serve to illustrate it, are considered in
"their relation to the case decided, but their possible bear-
"ing on all other cases is seldom completely investigated."
Cohens v. *Virginia,* 6 Wheat. 398.

We vigorously protest against the effort of the petitioner's counsel to commit this court to a ruling which it expressly declined to make.

We have gone thus fully into an examination of the St. Louis-Terre Haute case because petitioner's counsel seems to rely upon it in aid of his contention that this court has decided that a contract which fails to comply with the terms of a statute making it unlawful may nevertheless be declared valid.

As a final suggestion in this behalf we quote from a decision of this Court:—

"The fact that similar statutes are allowed different effects in different States is immaterial

"As observed by Mr. Justice Field, speaking for this court, 'The interpretation within the jurisdiction of one 'State becomes a part of the law of that State, as much 'so as if incorporated into the body of it by the Legis-'lature. If, therefore, different interpretations are given 'by different States to a similar local law, that law in 'effect becomes by the interpretations, so far as it is a 'rule for our action, a different law in one State from 'what it is in the other.'"

Chicago Union Bank v. *Kansas City Bank*, 136 U. S. 223, 235.

It is urged by petitioner's counsel that the Supreme Court of California in reaching the conclusion announced in the cited cases, that the question of failure to comply with the act can be raised by any one who connects himself with the title, did so not in the process of statutory interpretation or construction, but upon their conception of general legal principles, not involving a consideration of the language of the act itself.

Counsel, however, admits that the decision that the instrument could not be made without the required consent of the stockholders was to this extent a construction of the statute. We submit that if the instrument in question was unlawful,—*ultra vires* in its true sense, as the court in interpreting the statute has held,—the deduction that any one could take advantage of noncompliance with its terms followed as a corollary—an essential and necessary result flowing from the adjudication of the void character of the contract. All that the Supreme Court of California did

was to simply state this unavoidable result, which is therefore as much a construction of the statute as the main proposition out of which it flows.

At pages 68 and 69 of petitioner's brief counsel argues that the Supreme Court of California did not use the word *void* in its decision of the case of *McShane* v. *Carter;* that even if the word "void" had been used, it would have no more force than the same word in a statute, and that the court meant no more than that such contracts are *voidable.* He further says at page 58 that in *Granite Gold Mining Co.* v. *Magginniss*, 118 Cal. 131, and *Johnson* v. *California Lustral Co.*, 127 Cal. 283, "this Court will observe the ten-"dency of the California court to limit the meaning of the "statute."

An examination of the Lustral Company case will show that, far from mollifying the doctrine of *McShane* v. *Carter*, this case settles beyond cavil, the absolute *voidness* of such contracts. In that case the California Lustral Company had made a mortgage upon its property which "mortgage had never been ratified by the holders of its "stock, in accordance with the provisions of said statute." The mortgagor company was the sole defendant and itself set up the statute as its sole defense to the mortgage. The court below found that "lustral," or "paint-stone" land was not "mining ground" within the meaning of the act. The Supreme Court of California reversed the judgment of the court below upon this point and said: "The defense re-"lied on is hardly conscionable under the circum-"stances appearing, and it is with reluctance that we "conclude that the decision of the court respecting the "character of the land, within the contemplation of the "act of 1880, is contrary to the evidence. But the statute

"declares *unlawful* a mortgage or other disposition by the "directors of the whole or any part of the mining ground "of a mining corporation, except upon the ratification of "the holders of two-thirds of the stock, *and it must be en-"forced according to its intent.*"

Johnson v. *California Lustral Co.*, 127 Cal. 285-286.

The Supreme Court of California had the undoubted right to construe the California statute as it has construed it, regardless of what other courts have done with other statutes. This is certainly true as to domestic corporations. It cannot be contended for a moment that this court has the power in cases of this character to give a contrary construction and to nullify and obliterate the rule announced in *McShane* v. *Carter*, and subsequent cases, as applied to California corporations dealing with property within the State of California. It remains for us to determine whether or no the Gold Hill Mining Company, a foreign corporation, created for the avowed purpose of operating, working and dealing with mining ground within that State, coming into that State and conducting its business, is amenable to the statute under consideration; and, if so, can it, or its mortgagee, be permitted to contend that while it is subject to the statute it has a right to question the interpretation of it as announced by the courts of last resort of the State, and may appeal to Federal courts to ignore that interpretation.

Does the Act of 1880 apply to Foreign Corporations?

The language of the act is general, without limitation, and makes it unlawful for the directors of any mining corporation to mortgage or convey its mining ground unless

the instrument be ratified in the manner specified. There is nothing in the context to suggest a legislative intent to limit its operation to corporations organized under the laws of the State of California.

The reasoning employed and the result reached in a case decided by the Supreme Court of Ohio may with propriety be quoted on this point:—

"Section 6761, Rev. St., expressly authorizes the ac-"tion of *quo warranto* to be brought by the State against a "corporation which claims or has exercised a franchise or "privilege in contravention of law. This statute is not "limited to corporations organized under the laws of Ohio, "but applies to corporations generally. If it had been "intended to confine the application of the statute to do-"mestic corporations, apt language for that purpose would "doubtless have been employed. We hold that a foreign "corporation which is carrying on its business and making "contracts in that behalf in this State is exercising its cor-"porate franchise, from which, when exercised in contra-"vention of the laws of the State, it may be ousted by "proceedings in *quo warranto*."

State ex rel. Atty Gen'l v. *West. Mut. etc. L. & A. Soc.*, 47 Ohio, 167; 24 N. E. 392, 396.

To the same general purport we cite:—

Seyk v. *Miller's Nat. Ins. Co.*, 74 Wis. 67;

Pennington v. *Townsend*, 7 Wend. 276;

Daggs v. *Orient Insurance Co.*, 136 Mo. 382; 38 S. W. 85.

The case last cited came before this court, from whose opinion we make the following quotation:—

"It is urged that the statute is not made a condition upon "foreign corporations, but this view is not open to our "acceptance. The Supreme Court of Missouri, exercising "its function of interpretation, decides that it is."

Orient Insurance Co. v. *Daggs*, 172 U. S. 557, 567.

In other words, the determination as to whether the statute in question was or was not applicable to foreign corporations must be reached from an interpretation of the statute, and this Court felt impelled to abide by the interpretation adopted by the State court.

"The fact that this company was a foreign corporation "can make no difference. When it comes into this State by "comity to do its business here through its agents, it must "obey our laws and conform to our public policy, and if "they are unwilling to do so they must keep out of the "State."

People v. *Formosa*, 131 N. Y. 480.

"Upon the question whether the act was designed to "apply to foreign corporations made parties to suits in the "courts of this State, it may be suggested, in the first place, "that the terms of the act are general: 'No corporation "'shall hereafter interpose the defense of usury in any "'action.' There is nothing in the words of the act itself "which would indicate an intention on the part of the legis-"lature to limit its effect to domestic corporations. In the "second place, no sufficient considerations of local or State "policy have been suggested from which we would be au-"thorized to infer a motive on the part of the legislature to "restrict the operations of the act to domestic corpora-"tions."

Southern Life etc. Co. v. *Packer*, 17 N. Y. 51.

As we have heretofore observed, the Supreme Court of California applied the California statute in question (*Pekin M. Co.* v. *Kennedy*, 81 Cal. 356), as it had been construed in the McShane-Carter case, to foreign corporations.

Whatever may be the ultimate force of a decision of a court of last resort of a State upon subjects of this nature, it certainly cannot be weakened by the suggestion that the case was decided without having been fully argued or with-

out mature consideration of the question. With regard to such suggestion this Court has said:—

"Such argument might with propriety be addressed to "the Supreme Court of the State; but it is without favor "here. We are bound to presume that when the question "arose in the State court it was thoroughly considered by "that tribunal and that the decision rendered embodied its "deliberate judgment thereon."

Cross v. *Allen*, 141 U. S. 528, 538.

This "deliberate judgment" of the Supreme Court of California is assailed by counsel for petitioner upon several grounds, which we may briefly consider.

Petitioner contends that, properly construed, the act in question purports to regulate the internal affairs of corporations; that the State Legislature has no power to deal in this behalf with corporations organized under the laws of another State, therefore the California statute must be limited in its operation to domestic corporations. He cites the case of *Miles* v. *Woodward*, 115 Cal. 308, in support of this doctrine, and urges that by force of this later decision the doctrine in *Pekin Mining Company* v. *Kennedy* is nullified.

With reference to the case of *Miles* v. *Woodward*, Judge Morrow in his opinion (Record, p. 57 *et seq.*) clearly points out the distinction between the act under consideration in that case, carrying the title of "An Act amendatory of an Act entitled an Act for "the better protection of the stockholders in corpora-"tions formed under the laws of the State of California for "the purpose of carrying on and conducting the business "of mining" (Stats. Cal. 1880, p. 134), and the one involved in the case at bar which, by its terms, embraces all mining

corporations (Stats. Cal., p. 131), both acts having been approved upon the same day.

We may profitably quote the following excerpts from Judge Morrow's decision:—

"Complainant contends that the act, Stats. Cal. 1880, p. "134, and the act, Stats. Cal. 1880, p. 131, constitute but "one statute, relating only to domestic corporations, and "that consequently a foreign corporation such as the "respondent corporation is not bound by it. But an exam- "ination of the statutes in question by no means supports "complainant's position. In the first place, the titles show "very clearly the scope of the two acts, which were both "passed upon the same day. The title of the acts, Stats. "Cal. 1880, p. 131, is 'An act for the further protection of "'stockholders in mining companies;' that of the act, "Stats. Cal. 1880, p. 134, is, 'An act amendatory of an act "entitled 'An act for the better protection of stockholders "'and corporations formed under the law of the State of "'California for the purpose of carrying on and conduct- "'ing the business of mining,' approved March 30, 1874. "The general terms of the first of these titles, as contrasted "with the specific declarations comprised in the second, "must be apparent at first sight. The one is an act for the "protection of stockholders in mining corporations, the "other amends an act for the better protection of stock- "holders in mining corporations formed under the laws of "California. A comparison of the text of these two statutes "goes still further to show the distinctive feature which "marks them in separate statutes dealing with different "subjects. The act, Stats. Cal. 1880, p. 131, explicitly en- "joins as quoted above that the directors of a mining cor- "poration shall not sell, lease, mortgage, or otherwise dis- "pose of mining ground without the ratification of two- "thirds of the stockholders, which ratification must be "evidenced by writing, or by a resolution of a meeting of "stockholders called for that purpose. It prescribes "further that the stock shall be in the name of the real own- "er or trustee, and directs when the books are to be closed "and how the stock is to be voted. The act, Stats. Cal.

"1880, p. 134, lays down explicit directions for the keeping "of books, the making of a balance sheet, the duty of the "superintendent, and the examination of grounds, and "imposes certain penalties. The act of which this act is an "amendment (Stats. Cal. 1874, 866) deals precisely with "these same matters, and refers evidently and exclusively "to domestic corporations. A comparison of the two "statutes passed on April 23, 1880, leads, therefore, to the "following conclusions: The first act (Stats. Cal. 1880, "p. 131) applies to all mining corporations doing business "in this State, and regulates the actions of such corpora-"tions in selling, leasing, mortgaging, or otherwise dispos-"ing of mining ground owned by corporations in this "State. The second act (Stats. Cal. 1880, p. 134) applies "only to domestic corporations in the conduct of their "internal affairs. The former is a general law, affecting "all mining corporations transacting business in this State, "foreign corporations equally with domestic, and is in pur-"suance of the requirements of the constitution of the State "expressly providing that foreign corporations shall not "transact their business at an advantage over domestic cor-"porations."

The Circuit Court of Appeals thus expressed itself:—

"The law is well settled that each State has the power "to exclude any foreign corporation from entering into its "limits for the transaction of business except upon such "terms and conditions as it may see fit to impose. As was "said in *Hooper* v. *California*, 155 U. S. 648, 656:—

" 'The power to exclude embraces the power to regulate, " 'to enact and enforce all legislation in regard to things " 'done within the territory of the State which may be di-" 'rectly or incidentally requisite in order to render the en-" 'forcement of the ceded power efficacious to the fullest " 'extent, subject always, of course, to the paramount " 'authority of the Constitution of the United States.' "

"The Constitution of California, article 12, section 15, "declares that no corporation organized outside the limits "of this State, shall be allowed to transact business within "this State on more favorable conditions than are pre-

"scribed by law to similar corporations organized under "the laws of this State. This constitutional provision de- "clares the public policy of the State; and the supreme "court having applied the provisions of section 1 of the "statute under consideration to foreign corporations, and "the words 'any mining corporation' in said section being "broad enough to include foreign as well as domestic cor- "porations, we are not at liberty to say that such was not "the intention of the legislature because the other pro- "visions of the act are made applicable solely to domestic "corporations.

"This brings the construction of the statute in harmony "with the provisions of the constitution. *Grenada Co.* v. "*Brogden*, 112 U. S. 261, 269.

"The second and third sections of the act provide that "the stock in each mining corporation shall stand in the "books of the company in the names of the real owners or "in the names of the trustees of the real owners, and pro- "vision is made as to how the stock of the corporation shall "be voted.

"By these provisions the legislature sought only to "regulate and control the internal affairs of the domestic "corporations, as it had the right to do. Under the pro- "visions of section one the legislature did not attempt to "regulate the internal affairs of a foreign corporation. It "had no power to do so. (*Miles* v. *Woodward*, 115 Cal. 308, 311.)

"It sought to regulate and control the business affairs of "all corporations, both foreign and domestic, with refer- "ence to the manner in which their property situate within "the State may be disposed of by deed or mortgage. This "it had the power to do."

As opposed to the conclusion reached by the two courts upon the subjects heretofore discussed, counsel for petitioner takes the ground that if we take into consideration the title of the act as an aid to interpretation, we find the declared intent and purpose of it to be to protect stockholders; that the California Legislature has no concern with

the protection of stockholders in foreign corporations and that this Court, in the face of the California decisions, must hold that the act was limited in its application to domestic corporations.

There are several effective answers to this.

In the first place the title of an act cannot be resorted to in aid of interpretation except in cases of ambiguity.

The language of the act in question, "It shall not be lawful for the directors of *any* mining corporation," is entirely clear and unambiguous.

"The title of an act furnishes little aid in the construc-"tion of its provisions. * * * It cannot be used to "extend or restrain any positive provisions contained in "the body of the act. It is only when the meaning is doubt-"ful that resort may be had to the title and even then it "has little weight. It is seldom the subject of special con-"sideration by the Legislature."

Hadden v. *Larney*, 5 Wall. 107, 110.

The case of *U. S.* v. *Briggs*, 9 How. 351, is quite instructive and applicable to the question under immediate discussion. In it an act of Congress was under consideration, the title of which was "An Act to provide for the punish-"ment of offenses committed in cutting or destroying live "oak or other timber or trees reserved for naval purposes." The indictment charged Briggs with cutting white oak and hickory trees from the public lands, which class of timber was not reserved for such purposes.

The court in its opinion says:—

"The caption of the act would indicate that timber re-"served for naval purposes was meant to be protected in "this mode and none other, but the enacting clause is "*general* and not restricted to live oak, or red cedar, or tim-

"ber specially reserved for naval purposes. * * *
"Cutting and using of any other description of timber trees
"would be equally indictable * * *"

Similar principles are enunciated in:—

Price v. *Forrest*, 173 U. S. 410, 427.

The following quotation from a recognized authority on statutory interpretation is quite appropriate:—

"It is not unusual to find that the enacting part is not "exactly co-extensive with the preamble. In many acts of "Parliament, although a particular mischief is recited, the "legislative provisions extend beyond it. The preamble is "often no more than a recital of some of the inconveniences, "and does not exclude any others for which a remedy is "given by the statute. The evil recited is but the motive "for legislation; the remedy may both consistently and "wisely be extended beyond the cure of that evil; and if on "review of the whole act a wider intention than that ex- "pressed in the preamble appears to be the real one, effect "is given to it notwithstanding the less extensive import of "the preamble. (Lord Tenterden in *Doe v. Brandling*, 7 "B. & C. 660.) Thus the 4 & 5 Ph. & M., c. 8, made the ab- "duction of all girls under sixteen penal, though the pre- "amble referred only to heiresses and other girls with "fortunes. Co. Litt. 88 b. n. 14."

Endlich Interpretation of Statutes, p. 73.

Counsel for petitioner suggests that a different rule obtains where, as in California, the State Constitution prescribes that the act shall embrace but one subject, which subject shall be expressed in its title.

A failure to observe this requirement may affect the constitutionality of the statute (which, in the case at bar, has been upheld by the State courts), but not its interpretation.

Considering furthermore that in its Constitution, as heretofore noted, the State of California has declared the policy of the State concerning foreign corporations by directing that such corporations shall not be allowed to transact business in the State on more favorable conditions than are prescribed by law to similar corporations organized under State laws, which provisions of the Constitution is mandatory and prohibitory (Art. I, par. 22, Cal. Const.), and, even conceding for the moment that the act is susceptible of two constructions, one that its provisions apply to foreign corporations and the other that they do not, that construction should prevail which is in harmony with the State policy as expressed in its constitution.

"If there were room for two constructions, both equally "obvious and reasonable, the court must in deference to "the Legislature of the State, assume that it did not over-"look the provisions of the Constitution. * * * Our "duty therefore is to adopt that construction, which, with-"out doing violence to the fair meaning of the words used, "brings the statute into harmony with the provisions of the "Constitution."

Grenada Co. Supervisors v. *Brogden*, 112 U. S. 261, 268;

Cooley's Constitutional Limitations, p. 218;

Presser v. *Illinois*, 116 U. S. 252, 269.

If we may look at the titles of the two acts discussed in the opinions of the lower courts in this cause as an aid to interpretation, we find them both to have been passed at the same time; one of them applying in specific terms solely to domestic corporations, the other without any such limitation. This ought of itself to be sufficient to show a legis-

lative intent that the last act should apply to all corporations wherever formed.

There is no force in the suggestion that States have no legitimate concern with the welfare of stockholders in foreign corporations. It is a matter of common knowledge that in mining States like California, resident owners of property situated there, incorporate under the laws of other States for the purpose of avoiding some of the so-called uncomfortable features of that State's corporation laws, e. g., the assessability of stock; and that in very many cases the stockholders of the corporations organized under the laws of other States, for the purpose of acquiring property in California, are all residents of the State of California. It is equally well known that mining stocks of both domestic and foreign corporations pass current side by side in all stock markets and are purchased by the residents of the State where the mines are situated, without any regard to the domicile of the corporation.

We need not go beyond the cases cited by petitioner for examples of statutory enactments made for the protection of resident stockholders of foreign corporations.

If a state may by its laws make stockholders of foreign corporations liable for debts contracted by such corporations while doing business in the State, as decided by this court in *Pinney* v. *Nelson,* 22 Su. Ct. Rep. 52, there is no logical reason why it may not extend its patriarchal hand to such stockholders to save them from pillage and their corporate property from fraudulent confiscation.

Where in extending this protection, an act has been passed making it unlawful for such corporations to deal

with its property in the State except in a certain way, so that any attempted corporate act unless so performed is a *malum prohibitum*, it is no valid objection to the soundness of the policy or principle which dictates it that creditors may take advantage of non-compliance with the law to secure their just dues.

Since the decision of *McShane* v. *Carter* and the execution of the instrument sued upon in this action, the Legislature has amended the act in question.

The amendment provides:—

1. How the statutory ratification by stockholders may be evidenced by secretaries of mining corporations, and,

2. That no one except a stockholder shall be permitted to urge any objection to the *acquisition of any additional ground or other property by such corporation.*

In other words, in full contemplation of the decision of *McShane* v. *Carter*, the Legislature of California amended the statute involved only by providing, in effect, that no one except a stockholder might urge an objection to the *acquisition* of any additional ground or other property by such corporation. All the other provisions of the former statute, directing that it shall not be lawful for the directors of any mining corporation to sell, lease, mortgage or otherwise dispose of the whole or any part of the mining ground owned or held by such corporations, etc., are re-enacted substantially as in the former statute.

Stats. 1897 (Bancroft-Whitney Ed.), p. 96.

According to well-settled rules of construction this (with the modifications referred to) constitutes an express legislative concurrence in and approval of the rule estab-

lished in *McShane* v. *Carter* so far as it applies to conveyances or incumbrances of title to mining ground by mining corporations.

The re-enacting of the prohibitory provisions above referred to, implying an express approval of the expositions thereof made by the courts, also reaffirms the policy of the State in the premises.

III.

The duty of the Federal courts to follow the State rules of interpretation.

There can be no question as to what is the general rule uniformly followed by the Federal courts with reference to the binding force of State decisions. This rule has been tersely stated by this Court as follows:—

"Upon the construction of the Constitution and laws of a "State, this Court as a general rule follows the decisions of "her highest court unless they conflict with or impair the "efficacy of some provision of the Federal Constitution or a "rule of general commercial law. * * *

"Substantially conclusive effect is given to such decis-"ions upon the construction of State statutes as affecting "title to real estate within the State."

Gormley v. *Clark*, 134 U. S. 338.

Citations from the decisions of this Court might be multiplied indefinitely. We do not understand that counsel for petitioner denies the rule. The burden of his complaint is that the question at issue is one of "general commercial law," for the true solution of which the Federal courts are not confined to the decisions of the Supreme Court of the State.

We fail to observe how a matter which is confessedly the proper subject of state legislation when once embodied in a statute can be classified as "general commercial law." It is essentially a local state statute.

This is emphasized by the fact that not all of the States of the Union have statutes similar to the one under consideration, and in the nature of things there could be no general law of the character operating throughout the United States.

What is meant by the term "general commercial law"?

"Commercial law is a system of jurisprudence acknowl-
"edged by all maritime nations, and upon no subject is it of
"more importance than that there should be, as far as prac-
"ticable, uniformity of decision throughout the world. * *
"Commercial law, says Bouvier, is a phrase employed
"to denote the branch of the law which relates to the rights
"of property and the relations of persons engaged in com-
"merce. Persons engaged in commercial adventures,
"wherever they may have their domicile, have business
"relations throughout the civilized world, from which it
"results that commercial law is less local and more interna-
"tional than any other system of law, except the law of
"nations (p. 55). * * *
"State decisions in respect to titles to real estate and
"transfers of property, usually furnish the rule of decision
"in the Federal courts, by virtue of the beforementioned
"provision of the Judiciary Act; but the established prac-
"tice is, that it does not apply except in matters of a strictly
"local character; that is to say, to the positive statutes of
"the States and the interpretations of the same by their
"own tribunals, including rights and titles to things having
"a permanent locality, such as real property, and that it
"does not extend to questions of general commercial law,
"from which it follows that where any controversy arises
"as to the liability of a party to a bill of exchange, prom-
"issory note or other negotiable paper, in one of the Federal
"courts, which is not determined by the positive words of a

"State statute, or its meaning as construed by the State "courts, the Federal courts will apply to its solution the "general principles of the Law Merchant, regardless of any "local decision. 1 Daniel Neg. Inst. (2nd Ed.), Sec. 10."

Railroad Company v. *National Bank,* 102 U. S. 14, 31, 55, 57.

This question was quite fully considered by this Court in a case where the inquiry was identical so far as this point is concerned with the case at bar, except that the mortgage there considered was one upon personal property only. Said the Court:—

"The matter is not one of purely general commercial law. "While chattel mortgages are instruments of general use, "each State has a right to determine for itself under what "circumstances they may be executed, the extent of the "rights conferred thereby, and the conditions of their "validity. They are instruments for the transfer of prop-"erty, and the rules concerning the transfer of property are "primarily at least a matter of State regulation.

Etheridge v. *Sperry,* 139 U. S. 266, 276.

See, also,

Wilson v. *Perrin,* 11 Circuit Court of Appeals Rep., pp. 66, 68, and cases cited.

Brown v. *Furniture Co.,* 7 C. C. A. 225 (58 Fed. 286).

Counsel in the course of his argument employs the terms "negotiable bonds," and "*bona fide* holders," terms in frequent use in the Law Merchant, just as if this mere descriptive terminology earmarked the case as one of "general commercial law," and cast it into the mold of the "*lex mercatoria.*"

These "negotiable bonds" are the evidences of an indebtedness purporting to be issued by the Gold Hill Mining

Company, a foreign corporation. The validity of this indebtedness as such is not disputed. The bonds may be valid as corporate obligations, and the mortgage purporting to secure them absolutely void.

Philadelphia & S. R. R. Co. v. *Lewis,* 33 Pa. St. 33.

The bonds here in question purport to be secured by a trust deed or mortgage upon real property situated in the State of California. It is the validity of *this* instrument that is assailed because it fails to comply with the laws of the State where the property affected by it is situated.

As held by the Supreme Court of Wisconsin:—

"Section 1943 affects real estate only and is general in its "terms. It does not exempt from its operation contracts "made elsewhere. It is founded upon what the legislature "regarded as sound public policy and manifestly was in- "tended to apply to all insurance contracts, no matter "where made, affecting real property in this State. It is "as competent for the legislature to enact such a law as "one prescribing the mode of execution and the effect of "deeds, leases, or other conveyances of real property sit- "uated in this State, no matter where such instruments "were executed. Hence, conceding this to be an Illinois "contract, still it is governed by Section 1943, if otherwise "within that section."

Seyk v. *Millers' Nat. Ins. Co.,* 74 Wis. 67.

It is a familiar rule of the common law that the "*lex rei sitae*" controls the sale, hypothecation, alienation, and descent of real property. The law of the place where the property itself is situated must necessarily be looked to for the purpose of determining the validity of a questioned transfer or encumbrance. The law of the *situs* and its interpretation by the highest court of the State is just as

much a part of the contract as if they were incorporated into it. If one invests in mortgages, mortgage bonds, or real estate securities without ascertaining the condition of the title according to the law of the State where the property is situated, he does so at his peril. If the instrument under which he claims is fatally defective under the law of the place, no amount of *bona fides*, however persistently urged, will cure or atone for the defect. A deed which might be valid in West Virginia might be wholly worthless to pass title to property in California, and the decision of the question would in no sense involve a consideration of the principles of "general commercial law."

"So, though a corporation created by or under the laws "of one State has, in strictness, no extraterritorial life or "authority, and cannot of right insist upon extending its "operations within the limits of another, yet this will be "suffered without objection where no local policy forbids; "and the corporation may make contracts, and acquire, "hold and convey property as it would have a right to do in "the State of its origin. Real estate, however, it can only "take, hold, and transmit in accordance with the rules pre-"scribed by the law of the State in which the estate is sit-"uate."

Cooley's Constitutional Limitations, 150, 151.

That the State of California had the right to prescribe the manner in which instruments affecting the title to real property in that State should be executed, and to define what should and what should not be considered a valid transfer or encumbrance of such property, ought not to be seriously questioned.

"It is a principle too well established to admit of dispute "at this day, that to the law of the State in which the land "is situated we must look for the rules which govern its

"descent, alienation, and transfer and for the effect and "construction of its conveyances."

McGoon v. *Scales*, 9 Wall. 23, quoted in
Brine v. *Hartford Fire Ins. Co.*, 96 U. S. 627.

"The power of the State to regulate the tenure of real "property within her limits, and the modes of its acquisi- "tion and transfer, and the rules of its descent, and the "extent to which a testamentary disposition of it may be "exercised by its owners, is undoubted. It is an established "principle of law, everywhere recognized, arising from "the necessity of the case, that the disposition of immovable "property, whether by deed, descent, or any other mode, "is exclusively subject to the government within whose "jurisdiction the property is situated. (*McCormick* v. "*Sullivant*, 10 Wheat. 202.) The power of the State in this "respect follows from her sovereignty within her limits, "as to all matters over which jurisdiction has not been ex- "pressly or by necessary implication transferred to the "Federal Government. The title and modes of disposition "of real property within the State, whether *inter vivos* or "testamentary, are not matters placed under the control "of the federal authority. Such control would be foreign "to the purposes for which the Federal Government was "created, and would seriously embarrass the landed inter- "ests of the State."

United States v. *Fox*, 94 U. S. 315, 320.

The principle is announced and followed in numerous cases.

Jackson ex dem. v. *Chew*, 12 Wheat. 152;
Hinde v. *Vattier*, 5 Pet. 396, 400;
Livingston v. *Moore*, 7 Pet. 469, 542;
Suydam v. *Williamson*, 24 How. 427, 433;
Townsend v. *Todd*, 91 U. S. 452, 453;
Ober v. *Gallagher*, 93 U. S. 199, 207;
Hall v. *Decuir*, 95 U. S. 485, 500;

Barrett v. *Holmes*, 102 U. S. 651, 655;
Bucher v. *Cheshire R. R. Co.*, 125 U. S. 555, 582;
German Bank v. *Franklin Co.*, 128 U. S. 526, 538;
Randolph v. *Quidnick Co.*, 135 U. S. 457, 463;
Smith Purifier Co. v. *Groarty*, 136 U. S. 237, 241.
Cross v. *Allen*, 141 U. S. 528, 538;
Merchants' Bank v. *Pennsylvania*, 167 U. S. 461, 462;
Hartford F. Ins. Co. v. *Chicago M. & St. R. R. Co.*, 175 U. S. 91, 100 (1899).

"Since the ordinary administration of the law is carried "on by the State courts it necessarily happens that by the "course of their decisions certain rules are established "which become rules of property and action in the State "and have all the effect of law, and which it would be "wrong to disturb. This is especially true with regard to "the law of real estate and the construction of State consti-"tutions and statutes. Such established rules are always "regarded by the Federal courts no less than by the State "courts themselves, as authoritative declarations of what "the law is."

Burgess v. *Seligman*, 107 U. S. 20, 33;
B. & O. Railroad v. *Baugh*, 149 U. S. 368, 372.

The feature of the decision announced by the Supreme Court of California in *McShane* v. *Carter*, which is particularly obnoxious to counsel for petitioner, is that it permits parties other than stockholders to raise the question of the validity of the conveyance. He maintains that other States having similar statutes have held that only stockholders can complain of a failure to comply with their terms, and that the logic and reason is with the other States. This is quite immaterial. Each State determines for itself what rules shall apply to the disposition of prop-

erty within its limits. That two States may have precisely the same statutes on a given subject, and their respective courts place constructions diametrically opposed is no reason why Federal interposition should be invoked to compel uniformity, and force upon one State a rule sanctioned by another because the inherent logic and persuasive force of one decision may in the opinion of the Federal courts entitle it to be accepted as the rule to be applied in both States, or in all States where there are similar local statutes.

This court has heretofore had occasion to consider this class of argument, and it is conclusively disposed of as follows:—

"As to the construction of a State statute we generally "follow the rulings of the highest court of the State. . . . "So, when the highest court of a State affirms that a con- "veyance made by a debtor to a trustee for the benefit of "creditors is valid under the statutes of that State, we "should ordinarily in any case involving the validity of "such conveyance follow that ruling, *even though that "statute was common to many* States and in others a differ- "ent ruling had obtained."

Randolph v. *Quidnick Co.*, 135 U. S. 457, 463.

"The construction by the courts of a State of its consti- "tution and statutes is, as a general rule, binding on the "Federal courts. We may think the Supreme Court of a "State has misconstrued its constitution or its statutes, but "*we are not at liberty to set aside its judgments.* That court "is the final arbiter as to such questions."

Forsyth v. *Hammond*, 166 U. S. 506, 518.

A case arising under the recording Acts of Connecticut is quite instructive on this point. We quote from the opinion of the Court:—

"The question depends upon the recording Acts of the "State of Connecticut; and we are bound to follow the "decisions of the courts of that State in their construction "of these Acts, if there has been a uniform course of de- "cisions respecting them."

The Court then cites Connecticut cases which "are clear and decisive against the validity of the mortgage in question." Citing the case of *Bramhall* v. *Flood*, 41 Conn. 72, the Court continues:—

"It is there held that the mortgage must describe the "debt intended to be secured, and that it is not sufficient "that the debt be of such a character that it might have "been secured by the mortgage had it been truly described.

"*In most of the States a mortgage like the one before us, "reciting a specific indebtedness, but given in fact to secure "advances or indorsements thereafter to be made, is a valid "security*, and would be good to secure the $6,000 actually "advanced before other incumbrances were placed upon "the property. (Citing cases.)

"We should be quite willing to give the appellant the "benefit of this principle to the extent of his actual ad- "vances, *but the contrary rule seems to be so well settled in "Connecticut that we are not at liberty to do so.*"

Townsend v. *Todd*, 91 U. S. 452, 453.

And in the chattel mortgage case of *Etheridge* v. *Sperry*, heretofore cited, the Court said:—

"We are aware that there is a great diversity in the rul- "ings on this question by the courts of the several States, "but whatever may be our individual views as to what the "law ought to be in respect thereto, there is so much of a "local nature entering into chattel mortgages that this "court will accept the settled law of each State as decisive "in respect to any case arising therein."

139 U. S. 266, 276.

It is true that in other States statutes less severe than the California Act of April 23, 1880, have been construed less harshly than in California, but *this fact is of no moment* here. It cannot avail petitioner.

Where different States have adopted the *same* statutes, and their courts differ in construction, the Federal courts administer the law of each, notwithstanding seeming inconsistencies.

Shelby v. *Guy,* 11 Wheaton, 361.

"Nor does it matter that in courts of other States . . . "a different interpretation may have been adopted. If "such be the case, the courts of the United States will, in "conformity with the same principle, follow the different "ruling, so far as it affects title in those States. The in- "terpretation within the jurisdiction of one State becomes "a part of the law of that State, as much so as if incor- "porated into the body of it by the Legislature. If, there- "fore, different interpretations are given in different States "to a similar local law, that law, in effect, becomes, by the "interpretations, so far as it is a rule for our action, a "different law in one State from what it is in the other. " 'That the Statute laws of the States,' says Mr. Justice "Johnson, in delivering the opinion of this court in *Shelby* "v. *Guy,* 'must furnish the rule of decision of this court, " 'so far as they comport with the Constitution of the " 'United States, in all cases arising within the respect- " 'ive States, is a position that no one doubts. Nor is it " 'questionable that a fixed and received construction of " 'their respective statute laws, in their own courts, makes, " 'in fact, a part of the statute law of the country, however " 'we may doubt the propriety of that construction. It is " 'obvious that this admission may at times involve us in " 'seeming inconsistencies—as where States have adopted " 'the same statutes, and their courts differ in the con- " 'struction. Yet that course is necessarily indicated by " 'the duty imposed upon us, to administer as between " 'certain individuals, the laws of the respective States,

"'according to the best lights we possess of what those "'laws are.'"

Christy v. *Pridgeon*, 71 U. S. (4 Wall.) 196, 203.

"The construction so far as contract obligations incurred "under it are concerned, constitutes a part of the law as "much as if embodied in it. So far does this doctrine "extend that when a statute of two States, expressed in "the same terms, is construed differently by the highest "courts, they are treated by us as different laws, each em- "bodying the particular construction of its own State, and "enforced in accordance with it in all cases arising under "it. (*Christy* v. *Pridgeon*, 4 Wall. 196, and *Shelby* v. *Guy*, "11 Wheat. 361.) The statute, as thus expounded, de- "termined the validity of all contracts under it."

Louisiana v. *Pilsbury*, 105 U. S. 278, 294.

See, also,

Chicago Union Bank v. *Kansas City Bank*, 136 U. S. 223, 235.

As to the authority for the execution of the instrument by the officers of the corporation, and the alleged substantial compliance with the statute, as to ratification.

The record in this case discloses but one meeting of parties connected with the corporation in any capacity at which there was any attempt to sanction the execution of the instrument in question. The minutes of this meeting are found on page 80 of the Record. We there observe that the parties assembled were the incorporators and met in that capacity.

They first waived notice of the meeting, next received proof of the final incorporation of the company, then passed a resolution "that said Gold Hill Mining Company

issue one hundred *first mortgage* bonds of the denomination of five hundred dollars each," elected Morse trustee for the bond holders, and finally after all this had been done, "on motion of M. J. Shoecraft, seconded by G. L. Morse, it was voted that the incorporators of the Gold Hill Mining Company be named as the directors of the company." Whatever else may be claimed as the effect of this meeting and of these proceedings, it surely must be conceded that the resolution referred to relating to the prospective mortgage, was not adopted or passed by the directors of the corporation, The Gold Hill Mining Company, for there were no directors of the corporation named or in existence at the time when that resolution was passed.

The record in this case further shows that at no time was any resolution adopted by the board of directors of the corporation, The Gold Hill Mining Company, corresponding to the resolution of the corporators above referred to; the board of directors never did provide for or sanction such a mortgage as was specified in the corporator's resolution.

The reference of counsel for petitioner at page 50 of his brief is misleading. The resolution there referred to is merely to the effect that the company shall purchase certain mining ground and pay therefor the consideration specified in the resolution. There is nothing in the resolution which in terms or by implication sanctions the bonds referred to, and certainly nothing to authorize or ratify the mortgage in controversy.

The indenture which is the basis of this action never was authorized by any resolution or action of the board of di-

rectors of the Gold Hill Mining Company. Under the defenses pleaded in this action petitioner was required to show such authorization, and having failed to do so must be defeated. The law upon this phase of the case seems clear. In a similar case it was said:—

"The only authority upon which the president and "secretary acted was the resolution passed at the preliminary "nary meeting of stockholders, before organization of the "board of directors, and that such authorization was insufficient to support a finding of due and regular execution "is a proposition scarcely requiring authority in its support; *Gashwiler* v. *Willis*, 33 Cal. 12; 91 Am. Dec. 607; "*Alta Silver Mining Co.* v. *Alta Placer Mining Co.*, 78 Cal. "629."

Blood v. *La Serena, etc.*, 113 Cal. 221, 226.

"The president has not the power, by virtue of his office, "to mortgage the property of the company (see generally "*Bliss* v. *Kaweah C. & I. Co.*, 65 Cal. 502), nor has the "secretary such power by virtue of his office (*Blood* v. "*Maceuse*, 38 Cal. 594; 99 Am. Dec. 435;) nor have both "together the power which neither has separately, nor "have the stockholders such power (*Gashwiler* v. *Willis*, "33 Cal. 12; 91 Am. Dec. 607). The powers of a corporation must be exercised, and its power controlled by its "board of directors (Civ. Code, Sec. 305); the decision of "a majority of the directors, 'made when duly assembled,' "being valid as a corporate act (Civ. Code, Sec. 308). The "board must be duly assembled (*Harding* v. *Vandewater*, "40 Cal. 78). And their transaction should be recorded "(Civ. Code, Sec. 397; *Southern Cal. Assn.* v. *Bustamente*, "52 Cal. 192). The directors when not acting as a board, "have not the necessary power (*Gashwiler* v. *Willis*, 33 "Cal. 18; 91 Am. Dec. 607). The absence of a resolution "of the board renders the instrument invalid (*Southern* "*Cal. Assn.* v. *Bustamente*, 52 Cal. 192).

Alta Silver Mining Co. v. *Alta Placer Mining Co.*, 78 Cal. 629, 632.

See also,

Smith v. *Dorn*, 96 Cal. 82, 83;

Salfield v. *Sutter L. I. & R. Co.*, 94 Cal. 548, 549.

In the case of *Blood* v. *La Serena etc., supra*, the Court held that evidence might be adduced to show that the corporation was prevented by matters establishing an *estoppel in pais* from attacking the validity of the mortgage there involved. But the mortgage there involved was one made on the part of an ordinary commercial corporation covering agricultural lands only, and not subject to the provisions of the California Act under consideration.

As to the contention of counsel for petitioner that there was a substantial compliance with the statute as to ratification by reason (a) of the incorporators participating in the meeting referred to, and (b) because officers (president and secretary) signed the mortgage (as the act of the corporation), and that these officers held at the time more than two-thirds of the capital stock of the corporation, we respectfully submit that petitioner is foreclosed by the decision in *McShane* v. *Carter*. The California statute as construed by the California courts demands that the ratification must be made by the stockholders as *prescribed by the act*. Such ratification must be either (a) in writing signed and acknowledged by such stockholders, or (b) by resolution duly passed at a stockholders' meeting called for that purpose.

Stats. of Cal. 1880, p. 131.

The ratification contemplated by the act, as shown by the methods prescribed for its manifestation, is the approval and assent of the stockholders *in their personal ca-*

pacity and in the exercise of their individual judgment. Such approval is in nowise evidenced by the performance of the act of executing the instrument in their official capacity. On the contrary, they might have deemed themselves obliged as officers to sign an instrument which as stockholders they would refuse to ratify. As said by the California Court in *McShane* v. *Carter:*—

"Nor can the consent of the stockholders be presumed "from the mere fact of the conveyance, whether under the "corporate seal or not, for such consent or 'ratification' "may be after the deed is executed, and hence is not neces-"sarily or presumptively involved in the execution of such "deed."

80 Cal. 312-313.

In other words as we understand the statute and its interpretation by the California Court these methods are exclusive.

We may here recall the latest exposition of the act under consideration by the Supreme Court of California.

"Any mortgage to be effective must be made by the "board of directors, but under the provisions of the above "Act of 1880 the consent of two-thirds of the stockholders "is requisite to its validity. The stockholders are thus "made a component part of the power to make a mortgage "effective, but *cannot by any act of their own make a mort-"gage or validate one that has not been previously author-"ized and executed by the board of directors.*"

Curtin v. *Salmon River,* 130 Cal. 131.

The deductions flowing from the established principles in our judgment render it unnecessary to discuss the attitude of the bondholders in the case. None of them have intervened. The record discloses that the great majority of the bonds were issued by the incorporators and directors

to themselves with full knowledge of the existence of the California law and its interpretation. In some instances at least some of the bonds were used as collateral for the officers' private obligations. This aspect of the case, however, was not necessarily considered by the trial court as that court felt impelled to determine the case on the construction of the Act of 1880.

Counsel for Petitioner in his brief states that some of the defenses set forth in the answer were abandoned in the Circuit Court of Appeals. Counsel is mistaken. There has been no abandonment of any defense. As the Circuit Court based its ruling on one of the defenses alone, without discussing the others, naturally respondents' argument in the Appellate Court was in a great measure directed to the ruling of the Circuit Court. No defense has been or will be abandoned. It will not be necessary to discuss all of them in this proceeding, for the same reason which controlled us in the Circuit Court of Appeals.

RECAPITULATION.

I. Under the Act of 1880, as construed by the Supreme Court of California, the directors of mining companies have no power to convey or incumber mining ground, without the consent of two-thirds of the stock; such consent must be given in the manner prescribed by the act; without such consent, so given, the title does not pass and is not affected; the question may be raised by any one who connects himself with the title.

(*a*) The statute makes the stockholders a component part of the power to make a mortgage.

(*b*) The statute makes *unlawful* any departure therefrom.

(*c*) Being unlawful, an instrument so made is *void*.

(*d*) Being *void* and not merely voidable, no title passes or is affected; no estoppel arises by acquiescence or otherwise; any one who has an interest in the title may complain.

(*e*) The ratification contemplated by the Statute is the ratification of an instrument previously authorized by the Board of Directors, and previously executed.

II. The act applies to foreign corporations for

(*a*) The Supreme Court of California so construed it.

(*b*) There is no limitation in the language employed.

(*c*) It prescribes the sole method of conveying or encumbering a certain class of real estate which is exclusively governed by the *lex loci rei sitae*.

(*d*) The purpose of the act was to protect stockholders in *local* mines and it is well known that foreign as well as domestic corporations owned California mines and their stocks were current in Cailfornia markets.

(*e*) "It is the duty of the court to make such construc-"tion as shall suppress the mischief and advance the rem-"edy" neither of which results would have been accomplished, had not the court construed the act to apply to foreign corporations.

(*f*) Such construction is in harmony with and obedience to the mandate of the Constitution, Art. XII, par. 15; Art I, par. 22.

III. The Federal Court is bound to adopt the construction placed upon the act by the State courts, for

(*a*) It is a local act governing the "disposition of immovable property."

(*b*) It is not a question of "general commercial law," for the attack is made, not upon the bonds, but upon the instrument which purported to encumber the land.

(*c*) Every conclusion which flows out of the construction placed upon the act that the instrument is *void* is necessarily a part of the construction of the act.

IV. The instrument sued upon is of no value for

(*a*) A void contract cannot be the basis of ratification, estoppel or judicial recognition for any purpose.

We respectfully submit that the judgment should be affirmed.

CURTIS H. LINDLEY,
HENRY EICKHOFF.
Solicitors for Respondents.

Supreme Court of the United States.

No. 208.—October Term, 1901.

Frederick Williams Petitioner, *vs.* George C. Gaylord, Charles E. Maddrill and Dwight T. Rolfe.	On writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[May 19, 1902.]

This suit was brought by the petitioner as trustee of a mortgage made by the Gold Hill Mining Company, a corporation of West Virginia, upon certain mining ground in the State of California. Subsequently to the execution of the mortgage the corporation, in the conduct of its mining operations in the State of California, became indebted to the respondents for materials, labor and supplies. Mechanics' and materialmen's liens were filed by respondents and judgments obtained by them upon which executions were issued and the property mortgaged was sold. The respondents became its purchasers.

The corporation made default in the foreclosure suit, and a decree *pro confesso* was taken against it. The respondents pleaded their judgments and the titles which were claimed thereunder; and pleaded, further, that the mortgage was void because it had not been ratified by the stockholders of the corporation as required by a statute of California, passed April 30, 1880, and entitled "An act for the further protection of stockholders in mining companies," section 1 of which act is as follows:

"Sec. 1. It should not be lawful for the directors of any mining corporation to sell, lease or otherwise dispose of the whole or any part of the mining ground owned or held by such corporation, nor to purchase or obtain in any way additional mining ground, unless such act be ratified by the holders of at least two-thirds of the capital stock of such corporation. Such ratification may be either in writing signed and acknowledged by such stockholders or by resolution duly passed at a stockholders' meeting called for that purpose."

The Circuit Court sustained the defenses, (98 Fed. Rep. 465,) and its ruling was affirmed by the Circuit Court of Appeals. (109 Fed. Rep. 21.)

The mortgage was given to secure one hundred coupon bonds of $500 each. They were dated July 1, 1890. The mortgage bore the same date, and the manner and authority for its execution, the record exhibits, as follows, being the minutes of a meeting held June 5, 1890:

"The meeting was called to order by C. Littlefield, who nominated G. Livingston Morse, temporary chairman; nomination was seconded by W. W. Tucker and unanimously carried.

"C. Littlefield then proposed W. W. Tucker for temporary secretary; motion was seconded by R. H. Pettigrew, Jr., and was unanimously carried.

"Waiver of notice of corporators was then agreed to by all present as per roll-call.

"Roll-call of incorporators being made, all were found present as follows: M. J. Shoecraft, Calvin Littlefield, G. Livingston Morse, R. H. Pettigrew, Jr., and W. W. Tucker.

"The chairman said: We were now ready for business, whereupon Mr. M. J. Shoecraft presented a duplicate copy of papers of incorporation, and a telegram from secretary of State of West Virginia, stating that the charter of this company was duly filed June 23, 1890, which was adopted.

"On motion of W. W. Tucker, seconded by R. H. Pettigrew, Jr., it was—

"*Resolved*, That the said Gold Hill Mining Company issue one hundred first-mortgage bonds, of the denomination of five hundred dollars each, each bond bearing date of July 1, 1890, and bearing interest at the rate of ten per cent per annum, payable semi-annually, on the first day of January and July in each year, and to run five years from July 1, 1890; with the privilege of the said company paying off and redeeming the same sooner, by giving to the holders of said bonds six months' notice of the company's intention thus to do; to pay off said bonds and redeem the same on any day interest is payable, or on payment of six months' interest in advance; and the president and the secretary of said company are hereby authorized and directed to execute said bonds and mortgage for said company, and the said board hereby authorize and direct the seal of said company to be affixed to the same.

"On motion of C. Littlefield, seconded by M. J. Shoecraft, the chairman, G. L. Morse, was elected trustee for the bondholders. Motion carried.

"On motion of W. W. Tucker, seconded by R. H. Pettigrew, Jr., Mr. G. L. Morse was appointed to draw up a proper bond, have same executed and lithographed; also a stock certificate book of two hundred certificates, total cost not to exceed ninety-five dollars.

"On motion of M. J. Shoecraft, seconded by G. L. Morse, it was voted that the incorporators of the Gold Hill Mining Company be named as directors of said company. Motion carried.

"On motion of C. Littlefield, seconded by M. J. Shoecraft, the company's seal was ordered to be made, and Mr. Shoecraft be a committee to have the same made. Motion carried.

"Mr. Shoecraft reported that the by-laws were not quite ready, and the chairman suggested that he report a full set at a future meeting.

"On motion, the meeting was declared adjourned to the second Tuesday in July, 8th inst.

W. W. TUCKER,
Temporary Secretary."

It was testified that the gentlemen present at the meeting held all of the stock of the company.

The record also contains the minutes of a meeting held July 10, 1890, at which meeting a president, vice president, secretary and treasurer and general manager were elected. The following resolution was passed:

"On motion of Mr. Morse, seconded by Mr. Pettigrew, resolved, That the directors of this company be authorized and directed to purchase of M. J. Shoecraft the mines formerly known as the Nevada City Gold Quartz Mining Company, and pay therefor one hundred and sixty thousand shares of the capital stock of this company, being its total issue, and twenty-five thousand ($25,000) dollars in first mortgage bonds. Motion carried.

"On motion adjourned, to meet at the call of the president."

It was also testified that a paper was "executed by the Gold Hill Mining Company for the purpose of correcting the form of the mortgage as originally executed."

The paper was introduced in evidence. It was dated August 28, 1890, and recited that—

"Whereas, by a resolution of the board of directors of the Gold Hill Mining Company, duly passed and adopted on the twenty-fifth day of June, 1890, and in accordance with and in pursuance of said resolution, a mortgage was executed and delivered to G. Livingston Morse, as trustee for the use and purposes therein mentioned, on the first day of July, 1890, by the president and secretary of said company, they being authorized and directed in and by said resolution thus to do, and duly acknowledged by them, and the corporate seal of said company duly affixed to said mortgage by the like authority of said board of directors."

Certain mistakes were then stated to have been made in the mortgage, and the secretary, Calvin Littlefield, was given authority to correct them, and he and the president were directed and authorized to execute a paper on behalf of the company and to affix the corporate seal of the company thereto. The paper was duly executed and recorded in Nevada County, California. Other facts are stated in the opinion.

Mr. Justice McKenna, after stating the case, delivered the opinion of the Court.

The Circuit Court and the Circuit Court of Appeals based their judgments upon the act of 1880 as construed by the Supreme Court of the State California, regarding that construction as binding upon the Federal of tribunals. The conclusion is attacked by petitioner, and he urges the following propositions against it:

"I. The decision of the Supreme Court of California, to the effect that judgment creditors may take advantage of the act of 1880, is not binding upon the Federal courts either as constructive of that statute or determinative of a local rule of property.

"II. The act of 1880 does not apply to foreign corporations because the legislation of one State has no effect upon the powers and internal management of corporations organized in other States.

"III. Even if it should be held that the California statute (Statutes of 1880 p. 131) does apply to foreign corporations, the mortgage is valid, and a decree of foreclosure and sale should be directed."

(1) To sustain this proposition the petitioner makes a distinction between the construction of the statute and its application, conceding the binding force of the State decisions as to the former but denying their authority as to the latter. The contention enjoins a review of the decisions of the Supreme Court of the State.

In *McShane* v. *Carter*, (80 Cal. 310,) the plaintiff claimed title to mining property and certain appurtenant water rights under two deeds from the Nevada Reservoir Ditch Company, a mining corporation. He brought suit to enjoin the sale of the property under a judgment obtained against the company by one of its creditors. Judgment passed for the plaintiff in the trial court, but was reversed by the Supreme Court of the State. The latter court, by Hayne, Commissioner, said—

"That the important question arising on the appeal is whether the evidence is sufficient to show that the plaintiff was the owner of the property which the sheriff was proceeding to sell, and this depends upon whether the directors of said mining companies had power or authority to convey the property in the absence of a ratification by the stockholders as specified in the act of 1880.

"1. We think that the provision of said act goes to the power or authority of the directors. It cannot be construed to relate merely to their personal liability, for no penalty is imposed upon them, and to so construe it would be to practically nullify the act. In our opinion the directors of mining corporations have no power or authority to convey the mining ground without the consent of holders of two-thirds of the stock, given as prescribed by the act. And it follows without such consent the title does not pass. And if this be so, the question can be raised by any one who connects himself with the title of the corporation which owned the property, as well as by the stockholders thereof.

"Nor can the consent of the stockholders be presumed from the mere fact of the conveyance, whether under the corporate seal or not, for such consent or 'ratification' may be after the deed is executed, and hence is not necessarily or presumptively involved in the execution of such deed."

Counsel for petitioner says that the Supreme Court in its opinion not only construed but applied the act of 1880—construed it in that portion of the opinion which denied authority to directors of mining corporations to convey mining property without the consent of the stockholders; applied it in that portion of the opinion which declares that without the consent of the stockholders the title of mining property does not pass, and that "the question can be raised by any one who connects himself with the title of the corporation, . . . as well as by the stockholders thereof." This conclusion, it is asserted, is not warranted by the words of the statute, is opposed to the decisions of the courts of other States and of this court

construing similar statutes, and is not binding upon the Federal courts. And it is urged that the Circuit Court of Appeals "failed to distinguish between a decision of the State court construing the terms outlining the effect of the statute as enacted and a decision declaring that certain other persons not mentioned or referred to in the statute may by reason of relations existing between them and the stockholders, under general principles of corporation law, become beneficiaries of the statute under consideration." And it is further urged "that a case of the latter class does not construe a statute or establish a local rule of property, but is merely a decision upon the general law of corporate relations."

We are unable to accept the distinction. To accept it would deprive the State courts of the power to declare the implications of State statutes, and confine interpretation to the mere letter. The Supreme Court of California declared the effect of the act of 1880 as deduced from the language and purpose of the act, and this was necessarily an exercise of construction. The very essence of construction is the extension of the meaning of a statute beyond its letter, and it can seldom be done without applying some principle of law general in some branch of jurisprudence, and if whenever such application occurs the authority of the State courts to interpret the statutes ceases, the Federal tribunals, instead of following, could lead those courts in declaring the meaning of the legislation of the States.

The construction of the act of 1880 was certainly directly presented to the Supreme Court of California, and that construction determined the judgment which was rendered. The court declared that the provisions of the act extended "to the power or authority of the directors," and that without the consent of holders of two-thirds of the stock the title did not pass. In other words, the title remained in the corporation; the property remained the property of the corporation; and hence the deduction of the court, "the question can be raised by any one who connects himself with the title of the corporation which owned the property, as well as by the stockholders thereof." And this in consequence of the statute, and it is not the less so because the statutes of other States have been interpreted differently. It could hardly be contended that the legislature of California had not the authority to make such a consequence; and whether the legislature expressed its purpose or left it to inference, whether it expressed itself clearly or obscurely, the power of the State court to declare that purpose was none the less plenary.

McShane v. *Carter* was followed and affirmed in *Pekin Mining Co.* v. *Kennedy*, (81 Cal. 356;) *Granite Gold Mining Co.* v. *McGormess*, (118 Cal. 131;) *Johnson* v. *California Lustral Co.*, (127 Cal. 289;) *Curtin* v. *Salmon River Co.*, (130 Cal. 351.)

(2) That the act of 1880 applies to foreign corporations was decided in *Pekin Mining Co.* v. *Kennedy*, (81 Cal. 356.) That case, however, it is said, is practically overruled by *Miles* v. *Woodward*, (115 Cal. 308.) Woodward was a stockholder in a mining corporation organized under the laws of the State of California. He brought an action against Miles, who was a director of the corporation, for $1,000 damages for the violation of an act of the State, (Stats. 1880, p. 400,) which required the directors of the corporation to make or cause to be made, posted and filed, weekly reports of the superintendent.

"It is first contended," the court said, "that the act in question is unconstitutional for the reason that it operates only upon domestic corporations, and thereby allows foreign corporations to transact business within this State upon more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State, in violation of article XII, section 15, of the constitution."

This was denied, and the act was held constitutional as being properly confined to domestic corporations because it was "directed to the internal affairs of the corporation, and not to its outside dealings or to the conduct of its business."

As to the conduct of the business of foreign corporations, the court said the State could "exercise full powers of control," but over their organization and internal government the State had no such power, because "the laws of the State did not have extraterritorial force." And further the court said: "The law is designed to protect stockholders of domestic corporations, and to that end has declared that the directors of those corporations, the conduct of whose internal affairs is subject to the control of the legislature, shall do specific acts under a prescribed penalty for their failure and refusal."

The views expressed by the court were justified by the nature of the reports required to be made. They were of matters which alone concerned the stockholders—did not affect in any way the rights of others. To make such reports was not doing business; it was only giving information of business done. But when a corporation sells or encumbers its property, incurs debts or gives securities, it does business, and a statute regulating such transactions does not regulate the internal affairs of the corporation. And it is certainly within the power of a State to say what remedies creditors of corporations shall have over property situated within the State. Therefore *Miles* v. *Woodward* is not an authority for petitioners' position.

(3) Even if it be held that the act of 1880 applies to foreign corporations, it is nevertheless contended that the mortgage is valid, and a decree of foreclosure and sale should be directed. In support of that position it is urged that (*a*) the meeting of June 25, 1890, at which the execution

of the bonds and mortgage were resolved upon and authorized, though denominated a meeting of incorporators, was really a meeting of stockholders; (*b*) if this was not so, the corporation afterward, by its action of July 30, 1890, after the board of directors was organized, ratified the mortgage by the resolution which authorized its correction; (*c*) that not only those who participated in the meetings held more than two-thirds of the stock of the corporation, but that the president, M. J. Shoecraft, at the time of the execution of the mortgage owned two-thirds of the stock. In other words, it is urged, that the corporation either executed the mortgage or ratified it, and that the stockholders both authorized and concurred in its execution. The evidence of the facts involved in these claims is the minutes of the meetings set out in the statement of facts and of the following testimony of a witness (Calvin Littlefield) for complainant:

"Q. It appears that the following individuals were present at that meeting, namely: M. J. Shoecraft, Calvin Littlefield, G. Livingston Morse, R. H. Pettigrew, Jr., and W. W. Tucker. Can you tell me whether these gentlemen held all of the stock of the company at that time or not?—A. They did.

* * * * * *

"Q. Do you know whether Mr. Shoecraft owned as much as two-thirds of the stock of the company at the time when this mortgage was acknowledged?—A. I do not.

* * * * * *

"Q. Have you the certificate book of the defendant company in your possession?—A. I have.

"Q. Tell me, if you can, the amount of stock in the name of M. J. Shoecraft at the date when the mortgage was acknowledged, namely, July 24, 1890.—A. One hundred and sixty thousand shares.

"Q. Shares at what value?—A. Five dollars each.

"Q. What was the entire capital of the company?—A. Eight hundred thousand dollars—one hundred and sixty thousand shares.

"Q. Can you tell me what date this mortgage was acknowledged by the president and yourself?—A. I think the date of the acknowledgment.

"Q. That is what?—A. Twenty-fourth day of July, 1890.

"Q. Do you know why the mortgage was dated the 1st?—A. Yes.

"Q. Can you say why?—A. The arrangement with the owner—the first of July. By agreement the mortgage was to commence when the settlement ended.

Cross-examination:

"Q. You say that on the twenty-fourth day of July the whole number of shares were issued to M. J. Shoecraft?—A. I do.

"Q. As appears by certificate No. 1?—A. Yes.

"Q. Certificate No. 1 (showing) is now before you?—A. Yes.

"Q. Is that in a book?—A. Yes.

"Q. What is it?—A. The stock book.

* * * * * *

"Q. Certificate No. 1 has never been taken out of the book?—A. It has not.

"Q. It bears date the twenty-fourth day of July, 1890?—A. It does.

* * * * * *

"Q. Certificate No. 1, marked Exhibit 'C,' has never been separated from its stub?—A. It has not.

"Q. And certificate No. 2 has never been separated from its stub?—A. It has not.

"Q. All the other certificates about which you have testified, from No. 3 to No. 21, inclusive, have been separated from their stub at some time or other?—A. Yes, sir."

The witness also testified that shares were issued in certain amounts which were named and to certain persons who were named, "from certificate No. 1." A number of certificates which the witness testified about were introduced in evidence. They all bore date of July 24, 1890.

But as to the effect of this testimony and of the contentions of petitioners we are not called upon to express an opinion. The statute of California prescribed the manner of ratification to be "either in writing signed and acknowledged by such stockholders or by resolution duly passed at a stockholders' meeting called for that purpose." This manner of ratification was held to be necessary as we have seen, in *McShane* v. *Carter*, *supra*, and that case has not been limited or varied by any subsequent case. And we have no doubt of the power of the State to so prescribe, not only from its power over the manner of conveyance and the disposition of property situated within the State, but from its power over foreign corporations doing business within the State. (*Clarke* v. *Clarke*, 178 U. S. 176; *Hooper* v. *California*, 155 U. S. 648.) Nor can we contest that power, though we might, if we were permitted to exercise an independent judgment, construe the statute as only illustrative and not as exhaustive of the manner of ratification.

Judgment affirmed.

Mr. Justice HARLAN concurs in the judgment.

True copy.

Test:

Clerk Supreme Court, U. S.